

1989 No. 368

HOUSING, ENGLAND AND WALES
LOCAL GOVERNMENT, ENGLAND AND WALES
LONDON GOVERNMENT

The Housing (Preservation of Right to Buy) Regulations
1989

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| <i>Made - - - -</i> | <i>6th March 1989</i> |
| <i>Laid before Parliament</i> | <i>15th March 1989</i> |
| <i>Coming into force</i> | <i>5th April 1989</i> |

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by section 171C of the Housing Act 1985(a), section 101 of the Local Government Act 1985(b), and of all other powers enabling them in that behalf, hereby make the following Regulations:-

1.—(1) These Regulations may be cited as the Housing (Preservation of Right to Buy) Regulations 1989 and shall come into force on 5th April 1989.

(2) In these Regulations, "Part V" means Part V of the Housing Act 1985.

2. Where a landlord disposes of an interest in a dwelling-house in the circumstances described in section 171A(1) of the Housing Act 1985 (cases in which right to buy is preserved), Part V continues to apply subject to the exceptions, adaptations and other modifications specified in Schedule 1 to these Regulations.

3. Part V as it continues to apply by virtue of regulation 2 is set out in Schedule 2 to these Regulations

4. The Local Government Reorganisation (Preservation of Right to Buy) Order 1986(c) shall not apply in any case where the qualifying disposal, within the meaning of article 3 of that Order, is made on or after the coming into force of these Regulations.

6th March 1989

Nicholas Ridley
Secretary of State for the Environment

6th March 1989

Peter Walker
Secretary of State for Wales

(a) 1985 c.68; sections 171C and 171A were inserted by section 8 of the Housing and Planning Act 1986 (c.63).

(b) 1985 c.51.

(c) S.I. 1986/2092.

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

PART I

EXCEPTIONS AND ADAPTATIONS

1.—(1) Subject to the following provisions of this paragraph, in the provisions of Part V which apply to the preserved right to buy by virtue of these Regulations, 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 171A,
section 185, and
Schedule 9A, paragraph 1;

(b) to the references to tenant in—

section 125(4),
section 125A(2)(b),
section 125B,
section 138(2) (second reference only),
section 171B,
section 171H(1),
section 175(1),
section 187, the definition of “improvement contribution”,
Schedule 4, paragraphs 2 (the final word), 6(1), 9 and 10, and
Schedule 6, Part I, paragraph 6 and Part III;

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

(d) to the expressions “secure tenant” and “tenant” when used in a modification made by these Regulations.

(3) In Schedule 6, Part III, for the word “tenant” substitute the expression “qualifying person” in the following paragraphs only—

paragraph 13 (both references),
paragraph 16 (first reference only),
paragraph 16B(4)(c), and
paragraph 16C(4)(c).

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 (qualifying person’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.”.

6. In section 124 (landlord's notice admitting or denying right to buy) omit subsection (3).
7. In section 125 (landlord's notice of purchase price and other matters), in subsection (5)–
 - (a) at the end of paragraph (a) insert the word “and”, and
 - (b) omit the word “and” at the end of paragraph (c) and omit paragraphs (b) and (d) and the words following paragraph (d).
8. In section 125A (estimates and information about service charges), in subsection (2)(b), omit the words from “and section 450A” to the end of the subsection.
9. 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.”.
10. In section 128 (determination of value by district valuer) for subsection (6) substitute the following–

“(6) A notice under subsection (5) shall inform the qualifying person of the effect of sections 140, 141(1), (2) and (4) and 142(1) and (2) (landlord's notices to complete, effect of failure to comply and right to defer completion).”.
11. In section 129 (discount on right to buy and similar sales)–
 - (a) in subsection (2) omit the words “, subject to any order under subsection (2A)”; and
 - (b) omit subsections (2A) and (2B).
12. In section 130 (reduction of discount where previous discount given)–
 - (a) in subsection (2), in paragraph (a), omit the words “or, in such circumstances as may be prescribed by order of the Secretary of State, by a person so prescribed”; and
 - (b) omit subsection (5).
13. 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 the costs incurred by the landlord in respect of the dwelling-house and is to be treated as relevant for the purposes of this section;
 - (b) if the price before discount is below that amount there shall be no discount; and
 - (c) the discount shall not in any case reduce the price by more than £35,000.”
14. Omit sections 132 to 135 (the right to a mortgage).
15. In section 136 (change of qualifying person 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) for subsections (2) and (3) substitute the following–

“(2) If a notice under section 125 (landlord's notice of purchase price and other matters) has been served on the former qualifying person, the landlord shall serve on the new qualifying person a notice informing him of the effect of sections 140, 141(1), (2) and (4) and 142(1) and (2) (landlord's notices to complete, effect of failure to comply and right to defer completion).

(3) The new qualifying person may then serve a notice under section 142(1)(b) (qualifying person's notice claiming to exercise right to defer completion) within three months beginning with service on him of the landlord's notice under subsection (2) or within that period as extended in writing by the landlord.”;

- (c) omit subsections (4) and (5); and
- (d) in subsection (6) for the words “new tenant” substitute the words “new qualifying person”.

16. In section 137 (change of landlord after claiming right to buy)–

- (a) in the marginal note omit the words “or right to a mortgage”;
- (b) in subsection (1)–
 - (i) after the word “Where” insert the words “, other than in a case to which section 171D(1)(a) or section 171E(2)(a) applies (disposal to authority or body satisfying landlord condition for secure tenancies),”;
 - (ii) for the word “body” in each place in which that word occurs substitute the word “person”, and
 - (iii) omit the words “or the right to a mortgage”;
- (c) in subsection (2) omit paragraph (b).

17. In section 138 (duty of landlord to convey freehold or grant lease), in subsection (1), omit the words from “and to the amount” to the words “security of the dwelling-house”.

18. In section 139 (terms and effect of conveyance or grant)–

- (a) in the marginal note omit the words “and mortgage”;
- (b) in subsection (2) for the words before the semi-colon substitute the following –
“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”; and
- (c) omit subsection (3).

19. In section 140 (landlord's first notice to complete)–

- (a) for subsection (3) substitute the following–

“(3) A notice under this section shall not be served earlier than one year after the service on the qualifying person of–

 - (a) where he exercises his right under section 128 (determination of value by district valuer), the notice under subsection (5) of that section (further notice by landlord after determination), or
 - (b) where he does not exercise that right, the notice under section 125 (landlord's notice of purchase price and other matters).”;
- (b) after subsection (3) insert the following

“(3A) Where the qualifying person is entitled to defer completion, a notice under this section shall not be served earlier than three years after service of the notice under section 122 (qualifying person's notice claiming to exercise right to buy), if that period expires after whichever is applicable of the periods specified in subsection (3).”;
- (c) in subsection (4) omit paragraph (a) and omit the word “other” in paragraph (b); and
- (d) in subsection (5) omit from the words “and to the amount” to the end of the subsection.

20. For section 142 (when qualifying person is entitled to defer completion) substitute the following–

- “142.—(1) A qualifying person is entitled to defer completion if–**
- (a) his reckonable amount calculated in accordance with Schedule 7A (or the aggregate of such amounts where the right to buy is being exercised by more than one person) is less than the purchase price of the dwelling-house;
 - (b) he has, within the period mentioned below, served on the landlord a notice claiming to exercise the right to defer completion; and
 - (c) he has, within the same period, deposited the sum of £150 with the landlord.
- (2) The notice must be served and the sum of £150 deposited within the period of three months beginning with the service on the qualifying person–**
- (a) where he exercises his right under section 128 (determination of value by district valuer), of the notice under subsection (5) of that section (further notice by landlord after determination), or

(b) where he does not exercise that right, of the notice under section 125 (landlord's notice of purchase price and other matters),
or within that period as extended in writing by the landlord.

(3) Where a qualifying person has served on the landlord a notice under subsection (1)(b), the landlord shall, as soon as practicable after the date on which the notice is served, serve on the qualifying person a notice either—

- (a) admitting the qualifying person's right to defer completion, or
- (b) denying it and stating the reasons why, in the landlord's opinion, the qualifying person does not have the right.

(4) If in pursuance of a notice under this section the qualifying person deposits the sum of £150 with the landlord, then—

- (a) if he completes the transaction, the sum shall be treated as having been paid towards the purchase price, and
- (b) if he does not complete the transaction but withdraws his notice claiming to exercise the right to buy, or is deemed to have withdrawn it by virtue of section 141(4) (effect of failure to comply with landlord's second notice to complete), the sum shall be returned to him."

21. Omit sections 143 to 153 and Schedules 8 and 9 (the right to a shared ownership lease).

22. In section 153A (qualifying person's notices of delay)—

- (a) in subsection (1)—
 - (i) at the end of paragraph (b) insert the word "or" and omit paragraphs (c) and (d),
 - (ii) in paragraph (e) omit the words "or his right to be granted a shared ownership lease", and
 - (iii) in the words following paragraph (e), for the words "any of the cases in paragraphs (a) to (d)" substitute the words "either of the cases in paragraphs (a) and (b)", and omit the words from "or, if it is later" to the end of the subsection; and
- (b) in subsection (3)—
 - (i) in paragraph (a) for the words "any of the cases in paragraphs (a) to (d)" substitute the words "either of the cases in paragraphs (a) and (b)", after the words "section 124" insert the word "or" and omit the words "section 146 or section 147", and
 - (ii) in paragraph (b) omit the words "or his right to be granted a shared ownership lease".

23. In section 153B (payments of rent attributable to purchase price etc.)—

- (a) in subsection (1)—
 - (i) in paragraph (b) omit the words "or, as the case may be, section 150",
 - (ii) omit paragraph (c), and
 - (iii) in paragraph (d) omit the words "or, as the case may be, the notice claiming to exercise the right to be granted a shared ownership lease";
- (b) in subsection (2) for the words "any of the paragraphs (c) to (e)" substitute the words "paragraph (d) or (e)";
- (c) in subsection (3) omit the words "or, as the case may be, the tenant's initial contribution for the grant of a shared ownership lease"; and
- (d) in subsection (4) omit the words "or such other percentage as may be prescribed".

24. 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".

25. 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";

- (c) omit subsection (3); and
 - (d) in subsection (3A) omit the word "and" at the end of paragraph (a) and omit paragraph (b).
26. In section 156 (liability to repay is a charge on the premises)–
- (a) in subsections (1) and (3A), 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).
27. In section 157 (restriction on disposal of dwelling-houses in National Parks, etc.)–
- (a) in subsection (1) omit the words "a local authority, the Development Board for Rural Wales or";
 - (b) in subsection (4) omit the words "the Secretary of State or, where the landlord is a housing association," and omit the comma after "Housing Corporation"; and
 - (c) in subsection (5) omit the words "the Secretary of State or" and the words "he, or as the case may be," and the comma after "the Corporation".
28. In section 158 (consideration for reconveyance or surrender under s.157)–
- (a) in subsection (1) for the word "tenant" substitute the words "a qualifying person (or his successor in title or a person deriving title under him or his successor)"; and
 - (b) in subsection (2)
 - (i) in paragraph (a) for the words "the covenant required by" substitute the words "a covenant imposed by virtue of", and
 - (ii) omit the word "and" at the end of paragraph (a) and omit paragraph (b).
29. In section 162 (exempted disposals which end liability under covenants), in paragraph (a), for the words "the covenant required by" substitute the words "a covenant imposed by virtue of".
30. Omit sections 164 to 170 (various powers of Secretary of State).
31. Omit section 171 (power to extend right to buy, etc.).
32. In section 171A (cases in which right to buy is preserved), in subsection (2), omit the words "the following provisions of".
33. In section 171B (extent of preserved right: qualifying persons and dwelling-houses), in subsection (5)(b), for the words "became the statutory tenant or tenant as mentioned in subsection 4(a) or (b)" substitute the words "acquired the assured tenancy, became the assignee of the assured tenancy or became the tenant, as mentioned in subsection 4(a), (aa) or (b)".
34. In subsection 171H (disposal after notice claiming to exercise right to buy, etc.)–
- (a) in subsection (1) omit the words "or the right to a mortgage"; and
 - (b) in subsection (2) omit paragraph (b).
35. Omit section 173 (exclusion of shared ownership leases granted under this Part).
36. 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).
37. In section 176 (notices) omit subsections (1), (2) and (5).
38. Omit section 177 (errors and omissions in notices).

39. In section 178 (costs)–
- (a) in subsection (1)–
 - (i) in paragraph (a) omit the words from “the right to be granted a shared ownership lease” to the end of the paragraph,
 - (ii) omit paragraph (b), and
 - (iii) in the words following paragraph (b) omit the words “or Housing Corporation”; and
 - (b) omit subsections (2) and (3).
40. 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).
41. In section 180 (statutory declarations) for the words from the beginning of the section to the words “thinks fit” substitute the words “A landlord may if he thinks fit”.
42. In section 181 (jurisdiction of county court), in subsection (1)–
- (a) in paragraph (b) omit the words “or under a shared ownership lease granted in pursuance of this Part”, and
 - (b) in the words following paragraph (b) omit the words “and paragraph 11 of Schedule 8”.
43. Omit section 182 (power to repeal or amend local Acts).
44. 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”.
45. In section 187 (minor definitions) omit the definition of “total share”.
46. In section 188 (the index of defined expressions: 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”
 “effective discount” etc.
 “friendly society”
 “full mortgage”
 “housing trust”
 “initial share” etc.
 “insurance company”
 “prescribed percentage” etc.
 “right to further advances”
 “total share” etc.
 “trustee savings bank”;
 - (b) at the appropriate places in the Table insert–
 “assured tenancy” section 622”
 “qualifying successor” section 171B(4)”.
47. In Schedule 4 (qualifying period for right to buy and discount)–
- (a) in paragraph 7–
 - (i) in sub-paragraph (1) omit the words “and 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 1986(b),
 a fire authority for the purposes of the Fire Services Acts 1947 to 1959,

(a) 1947 c.54.
 (b) S.I. 1986/594 (N.I. 3).

a government department,
an internal drainage board within the meaning of section 6 of the Land Drainage Act 1976(a),
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(b),
a police authority,
a water authority established in accordance with section 2 of the Water Act 1973(c) and a water authority in Scotland as constituted under section 3 of the Water (Scotland) Act 1980(d),
the Agricultural and Food Research Council,
the AFRC Institute for Grassland and Animal Production,
the British Airports' Authority,
the British Broadcasting Corporation,
the British Coal Corporation,
the British Gas Corporation,
the British Railways Board,
the British Steel Corporation,
the British Waterways Board,
the Central Electricity Generating Board,
the Church Commissioners,
the Civil Aviation Authority,
the Commissioners of Northern Lighthouses,
the Countryside Commission for Scotland,
the Electricity Council,
The Fire Authority for Northern Ireland constituted under the Fire Services (Northern Ireland) Order 1984(e),
the Highlands and Islands Development Board,
the Historic Buildings and Monuments Commission for England,
the Lake District Special Planning Board,
the Lee Valley Regional Park Authority,
London Regional Transport,
the Medical Research Council,
the National Bus Company,
the National Library of Wales,
the National Museum of Wales,
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(f),
the Northern Ireland Transport Holding Company established under the Transport Act (Northern Ireland) 1967(g),
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 Sports Council for Northern Ireland,
the Trinity House,
the United Kingdom Atomic Energy Authority,
the Welsh Development Agency.

(a) 1976 c.70.

(b) 1968 c.73.

(c) 1973 c.37.

(d) 1980 c.45.

(e) S.I. 1984/1821 (N.I. 11).

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

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

(5) The landlord condition is not satisfied 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(a).”;

(b) omit paragraph 8.

48. In Schedule 5 (exceptions to the right to buy)–

- (a) omit paragraphs 1 (charities) and 3 (certain housing associations), and
(b) in paragraph 11, in sub-paragraph (1)(a)(ii), for the words “a predecessor of the tenant or a person qualified to succeed the tenant by virtue of Part IV of the Housing Act 1985” substitute the words “a previous tenant or a person qualified to succeed the tenant under section 17 of the Housing Act 1988(b) (succession to assured periodic tenancy by spouse)”.

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

- (a) in Part I (common provisions)–
(i) in paragraphs 2(2)(a) and (b), for the words “the secure tenancy” substitute the words “his tenancy”,
(ii) in paragraph 4, for the words “the secure tenancy” substitute the words “the qualifying person’s tenancy”,
(iii) in paragraph 6, for the word “tenant” substitute the words “transferee or grantee”, and
(iv) in paragraph 7, in the definition of “tenant’s incumbrance”, in sub-paragraph (a) for the words “the secure tenancy” substitute the words “the qualifying person’s tenancy” and in sub-paragraph (b), for the words “the secure tenancy” substitute the words “that tenancy”;
(b) in Part III (leases)–
(i) in paragraph 12 omit sub-paragraph (3),
(ii) in paragraph 13 for the words “the secure tenancy” substitute the words “his tenancy” and
(iii) omit paragraph 16D and add the following paragraphs–

Inflation allowances

16E. The inflation allowance for the purposes of paragraphs 16B(2) and 16C(3) shall be calculated, in respect of each item, by the formula–

$$I = \left(E \times \frac{C}{P} \right) - E$$

where–

C = the index figure relating to the last date in the initial period on which costs were incurred in respect of the item (whether or not such costs were the full costs incurred in respect of that item),

E = the amount shown in the estimates contained in the notice under section 125 (landlord’s notice of purchase price etc.) as the tenant’s estimated contribution in respect of that item,

I = the inflation allowance,

P = the index figure relating to the date on which the landlord served the notice on the qualifying person, and

the “index figure” is an index figure in the “Public sector housing repair and maintenance cost index” in the “Housing and Construction Statistics” published from time to time by Her Majesty’s Stationery Office, but does not include a provisional index figure.

16F.—(1) The inflation allowance for the purposes of paragraph 16B(3)(a) shall be calculated by the formula–

$$I = \left(A \times \frac{C}{P} \right) - A$$

(2) The inflation allowance for the purposes of paragraph 16B(3)(b) shall be calculated by the formula–

$$I = \left(R \times \frac{C}{P} \right) - R$$

(a) 1894 c.60.

(b) 1988 c.50.

(3) In this paragraph—

- (i) A = the amount shown in the estimates contained in the notice under section 125 (landlord's notice of purchase price etc.) as the estimated annual average amount,
 - C = the index figure relating to the date on which the tenant is required to pay the relevant charge for which the inflation allowance is being calculated, or, if earlier, the date the initial period ends,
 - I = the inflation allowance,
 - P = the index figure relating to the date on which the landlord served the notice on the qualifying person, and
 - R = the average rate produced by averaging over the reference period all works for which estimates are contained in the notice.
- (ii) "Index figure" means an index figure in the "Public sector housing repair and maintenance cost index" in the "Housing and Construction Statistics" published from time to time by Her Majesty's Stationery Office, but does not include a provisional index figure.

Information for tenants

16G.—(1) The information which must be given to a tenant when he is asked to pay a relevant charge in respect of works itemised in the estimates is—

- (a) a description of the works to which the relevant charge relates, together with an identification of the item in the estimates contained in the notice under section 125 (landlord's notice of purchase price etc.) to which the works relate,
- (b) whether or not further costs will be incurred in respect of which item in the initial period; and, if not, the last date in the initial period on which costs were incurred in respect of the item (whether or not further costs will be incurred after the end of the initial period),
- (c) the amount of any payment made by a predecessor in title of the tenant in respect of such item, and
- (d) an explanation in simple terms of the provisions of paragraphs 16B to 16E, to the extent that they are relevant.

(2) In this paragraph "relevant charge" means a service charge or an improvement contribution to which the provisions of paragraph 16B or 16C are or may be relevant.

16H.—(1) The information which must be given to a tenant when he is asked to pay a relevant charge in respect of works not itemised in the estimates contained in the notice under section 125 (landlord's notice of purchase price etc.) is—

- (a) a description of the works or that part of the works to which the relevant charge relates,
- (b) the extent to which costs were incurred in respect of such works or part of the works in—
 - (i) any part of the initial period falling within the reference period, and
 - (ii) any part of the initial period not falling within the reference period,
- (c) the amount of any payment made by a predecessor in title of the tenant which is relevant in relation to such works, and
- (d) an explanation in simple terms of the provisions of paragraph 16B and paragraphs 16E and 16F, to the extent that they are relevant.

(2) In this paragraph "relevant charge" means a service charge or an improvement contribution to which the provisions of paragraph 16B or 16C are or may be relevant."

50. Omit Schedule 7 (mortgage in pursuance of right to a mortgage).

PART II
SCHEDULES TO BE INSERTED AFTER
SCHEDULES 5 AND 6

1. After Schedule 5 insert the following Schedule—

“SCHEDULE 5A
LIMITS ON AMOUNT OF DISCOUNT
RELEVANT COSTS

Section 131.

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

3. Works of improvement to a dwelling-house are relevant works but works of repair or maintenance or works to deal with any defect affecting the dwelling-house are not 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 etc., or the works will be carried out under the proposed terms of the conveyance or grant.

Ascertainment of cost floor

5.—(1) 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 in respect of—

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

Estimates

6. 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.

Companies

7.—(1) In a case where a landlord is a company, references to the landlord in paragraphs 4(a) and 5(2) 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).”

2. In place of Schedule 7 insert the following Schedule—

“SCHEDULE 7A

Section 142(1).

RECKONABLE AMOUNT OF QUALIFYING PERSON
FOR PURPOSES OF RIGHT TO DEFER COMPLETION

Introductory

1. This Schedule has effect with respect to the calculation of a qualifying person’s reckonable amount for the purpose of ascertaining whether he is entitled to defer completion.

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 who is exercising the preserved right to buy.

Reckonable amount

3. The qualifying person’s reckonable amount for the purposes of section 142 (deferment of completion) is to be calculated by taking the amount which, in accordance with paragraphs 4 to 7, is his annual income and multiplying it by such factor as, under paragraph 10, is appropriate to the case.

Income from employment

- 4.—(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

5.—(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.

(a) 1985 c.6.

Other income

6.—(1) This paragraph applies to income from a source to which paragraphs 4 and 5 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 27, 28, 29, 39 and 40 of the Social Security Act 1975(b) (retirement pensions); and
- (c) sections 6, 7 and 8 of the Social Security Pensions Act 1975(c) (state earnings related pensions).

(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 subparagraph (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

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

Estimates

8. The landlord may accept any estimate for the purposes of paragraphs 4 to 6.

Joint tenants

9. Where the right to buy is being exercised by more than one qualifying person, the preceding provisions of this Schedule shall be applied separately to determine the amount of each person's annual income.

Multipliers

10.—(1) This paragraph specifies the appropriate factor to be applied as a multiplier of the qualifying person's annual income to arrive at his reckonable amount.

(2) If the qualifying person's income is the principal income, the appropriate factor in relation to his 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

| <i>Qualifying person's age on the date of service of the notice</i> | <i>Multiplier</i> |
|---|-------------------|
| 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 annual income is 1.

(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.14.

(c) 1975 c.60.

(d) 1970 c.55.

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

(f) 1975 c.61.

(g) 1976 c.71.

- (4) Subject to sub-paragraph (5), the qualifying person's income is the principal income for the purposes of this paragraph if—
- (a) he is the only qualifying person with annual income, or
 - (b) there is more than one qualifying person with annual income and the amount of his annual income is larger than that of the other qualifying person or, as the case may be, of any of the other qualifying persons, or
 - (c) in a case to which paragraph (b) applies, the landlord agrees to treat the qualifying person's income as the principal income, despite the fact that the amount of the annual income of another qualifying person is larger than his.
- (5) The income of only one qualifying person shall be treated as the principal income for the purposes of this paragraph.”.

SCHEDULE 2

Regulation 3.

PART V AS IT APPLIES IN CASES WHERE THE RIGHT TO BUY IS PRESERVED

THE RIGHT TO BUY

The right to buy

The right to buy.

118.—(1) A qualifying person has the right to buy, that is to say, the right, in the circumstances and subject to the conditions and exceptions stated in the following provisions of this Part—

- (a) if the qualifying dwelling-house is a house and the landlord owns the freehold, to acquire the freehold of the dwelling-house;
- (b) if the landlord does not own the freehold or if the qualifying dwelling-house is a flat (whether or not the landlord owns the freehold), to be granted a lease of the dwelling-house.

Qualifying period for right to buy.

119.—(1) The right to buy does not arise unless the period which, in accordance with Schedule 4, is to be taken into account for the purposes of this section is at least two years.

(2) Where the tenancy held by the qualifying person is a joint tenancy the condition in subsection (1) need be satisfied with respect to one only of the joint tenants.

Exceptions to the right to buy.
Circumstances in which the right to buy cannot be exercised.

120. The right to buy does not arise in the cases specified in Schedule 5 (exceptions to the right to buy).

121.—(1) The right to buy cannot be exercised if the qualifying person is obliged to give up possession of the dwelling-house in pursuance of an order of the court or will be so obliged at a date specified in the order.

(2) The right to buy cannot be exercised if the person, or one of the persons, to whom the right to buy belongs—

- (a) has a bankruptcy petition pending against him,
- (c) is an undischarged bankrupt, or
- (d) has made a composition or arrangement with his creditors the terms of which remain to be fulfilled.

Claim to exercise right to buy

Qualifying person's notice claiming to exercise right to buy.

122.—(1) A qualifying person claims to exercise the right to buy by written notice to that effect served on the landlord.

(2) In this Part “the relevant time”, in relation to an exercise of the right to buy, means the date on which that notice is served.

(3) The notice may be withdrawn at any time by notice in writing served on the landlord.

(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.

Claim to share right to buy with members of family.

123.—(1) A qualifying person may in his notice under section 122 require that not more than three members of his family who are not joint tenants but occupy the dwelling-house as their only or principal home should share the right to buy with him.

(2) He may validly do so in the case of any such member only if—

- (a) that member is his spouse or has been residing with him throughout the period of twelve months ending with the giving of the notice, or
- (b) the landlord consents.

(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.

124.—(1) Where a notice under section 122 (notice claiming to exercise right to buy) has been served by the qualifying person, the landlord shall, unless the notice is withdrawn, serve on the qualifying person within the period specified in subsection (2) a written notice either—

Landlord's notice admitting or denying right to buy.

- (a) admitting his right, or
- (b) denying it and stating the reasons why, in the opinion of the landlord, the qualifying person does not have the right to buy.

(2) The period for serving a notice under this section is four weeks where the requirement of section 119 (qualifying period for the right to buy) is satisfied by a period or periods during which the landlord was the landlord on which the qualifying person's notice under section 122 was served, and eight weeks in any other case.

125.—(1) Where a qualifying person has claimed to exercise the right to buy and that right has been established (whether by the landlord's admission or otherwise), the landlord shall—

Landlord's notice of purchase price and other matters.

- (a) within eight weeks where the right is that mentioned in section 118(1)(a) (right to acquire freehold), and
- (b) within twelve weeks where the right is that mentioned in section 118(1)(b) (right to acquire leasehold interest),

serve on the qualifying person a notice complying with this section.

(2) The notice shall describe the dwelling-house, shall state the price at which, in the opinion of the landlord, the qualifying person is entitled to have the freehold conveyed or, as the case may be, the lease granted to him and shall, for the purpose of showing how the price has been arrived at, state—

- (a) the value at the relevant time,
- (b) the improvements disregarded in pursuance of section 127 (improvements to be disregarded in determining value), and
- (c) the discount to which the qualifying person is entitled, stating the period to be taken into account under section 129 (discount) and, where applicable, the amount mentioned in section 130(1) (reduction for previous discount) or section 131(1) or (2) (limits on amount of discount).

(3) The notice shall state the provisions which, in the opinion of the landlord, should be contained in the conveyance or grant.

(4) Where the notice states provisions which would enable the landlord to recover from the qualifying person—

- (a) service charges, or
- (b) improvement contributions,

the notice shall also contain the estimates and other information required by section 125A (service charges) or 125B (improvement contributions).

(4A) The notice shall contain a description of any structural defect known to the landlord affecting the dwelling-house or the building in which it is situated or any other building over which the qualifying person will have rights under the conveyance or lease.

(5) The notice shall also inform the qualifying person of—

- (a) his right under section 128 to have the value of the dwelling-house at the relevant time determined or re-determined by the district valuer, and
- (c) the effect of sections 140, 141(1), (2) and (4) and 142(1) and (2) (landlord's notices to complete and effect of failure to comply and right to defer completion).

125A.—(1) A landlord's notice under section 125 shall state as regards service charges (excluding, in the case of a flat, charges to which subsection (2) applies)—

Estimates and information about service charges.

- (a) the landlord's estimate of the average annual amount (at current prices) which would be payable in respect of each head of charge in the reference period, and
- (b) the aggregate of those estimated amounts,

and shall contain a statement of the reference period adopted for the purpose of the estimates.

- (2) A landlord's notice under section 125 given in respect of a flat shall, as regards service charges in respect of repairs (including works for the making good of structural defects), contain—
- (a) the estimates required by subsection (3), together with a statement of the reference period adopted for the purpose of the estimates, and
 - (b) a statement of the effect of—
 - paragraph 16B of Schedule 6 (which restricts by reference to the estimates the amounts payable by the tenant).
- (3) The following estimates are required for works in respect of which the landlord considers that costs may be incurred in the reference period—
- (a) for works itemised in the notice, estimates of the amount (at current prices) of the likely cost of, and of the qualifying person's likely contribution in respect of, each item, and the aggregate amounts of those estimated costs and contributions, and
 - (b) for works not so itemised, an estimate of the average annual amount (at current prices) which the landlord considers is likely to be payable by the qualifying person.

Estimates and information about improvement contributions.

- 125B.**—(1) A landlord's notice under section 125 given in respect of a flat shall, as regards improvement contributions, contain—
- (a) the estimates required by this section, together with a statement of the reference period adopted for the purpose of the estimates, and
 - (b) a statement of the effect of paragraph 16C of Schedule 6 (which restricts by reference to the estimates the amounts payable by the tenant).
- (2) Estimates are required for works in respect of which the landlord considers that costs may be incurred in the reference period.
- (3) The works to which the estimates relate shall be itemised and the estimates shall show—
- (a) the amount (at current prices) of the likely cost of, and of the tenant's likely contribution in respect of, each item, and
 - (b) the aggregate amounts of those estimated costs and contributions.

Reference period for purposes of ss. 125A and 125B.

- 125C.**—(1) The reference period for the purposes of the estimates required by section 125A or 125B is the period—
- (a) beginning on such date not more than six months after the notice is given as the landlord may reasonably specify as being a date by which the conveyance will have been made or the lease granted, and
 - (b) ending five years after that date or, where the notice states that the conveyance or lease will provide for a service charge or improvement contribution to be calculated by reference to a specified annual period, with the end of the fifth such period beginning after that date.
- (2) For the purpose of the estimates it shall be assumed that the conveyance will be made or the lease granted at the beginning of the reference period on the terms stated in the notice.

Purchase Price

Purchase Price.

- 126.**—(1) The price payable for a dwelling-house on a conveyance or grant in pursuance of this Part is—
- (a) the amount which under section 127 is to be taken as its value at the relevant time, less
 - (b) the discount to which the purchaser is entitled under this Part.
- (2) References in this Part to the purchase price include references to the consideration for the grant of a lease.

Value of dwelling-house.

- 127.**—(1) The value of a dwelling-house at the relevant time shall be taken to be the price which at that time it would realise if sold on the open market by a willing vendor—
- (a) on the assumptions stated for a conveyance in subsection (2) and for a grant in subsection (3),
 - (b) disregarding any improvements made by any of the persons specified in subsection (4) and any failure by any of those persons to keep the dwelling-house in good internal repair, and
 - (c) on the assumption that any service charges or improvement contributions payable will not be less than the amounts to be expected in accordance with the estimates contained in the landlord's notice under section 125.

- (2) For the conveyance the assumptions are—
- (a) that the vendor was selling for an estate in fee simple with vacant possession,
 - (b) that neither the qualifying person nor a member of his family residing with him wanted to buy, and
 - (c) that the dwelling-house was to be conveyed with the same rights and subject to the same burdens as it would be in pursuance of this Part.
- (3) For the grant of a lease the assumptions are—
- (a) that the vendor was granting a lease with vacant possession for the appropriate term defined in paragraph 12 of Schedule 6 (but subject to sub-paragraph (3) of that paragraph),
 - (b) that neither the qualifying person nor a member of his family residing with him wanted to take the lease,
 - (c) that the ground rent would not exceed £10 per annum, and
 - (d) that the grant was to be made with the same rights and subject to the same burdens as it would be in pursuance of this Part.
- (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.

128.—(1) Any question arising under this Part as to the value of a dwelling-house at the relevant time shall be determined by the district valuer in accordance with this section.

Determination of value by district valuer.

(2) A qualifying person may require that value to be determined, or as the case may be re-determined, by a notice in writing served on the landlord not later than three months after the service on him of the notice under section 125 (landlord's notice of purchase price and other matters) or, if proceedings are then pending between the landlord and the qualifying person for the determination of any other question arising under this Part, within three months of the final determination of the proceedings.

(3) If such proceedings are begun after a previous determination under this section—

- (a) the qualifying person may, by notice in writing served on the landlord within four weeks of the final determination of the proceedings, require the value of the dwelling-house at the relevant time to be re-determined, and
- (b) the landlord may at any time within those four weeks, whether or not a notice under paragraph (a) is served, require the district valuer to re-determine that value;

and where the landlord requires a re-determination to be made in pursuance of this subsection, it shall serve on the qualifying person a notice stating that the requirement is being or has been made.

(4) Before making a determination or re-determination in pursuance of this section, the district valuer shall consider any representation made to him by the landlord or the qualifying person within four weeks from the service of the qualifying person's notice under this section, or as the case may be, from the service of the landlord's notice under subsection (3).

(5) As soon as practicable after a determination or re-determination has been made in pursuance of this section, the landlord shall serve on the qualifying person a notice stating the effect of the determination or re-determination and the matters mentioned in section 125(2) and (3) (terms for exercise of right to buy).

(6) A notice under subsection (5) shall inform the qualifying person of the effect of sections 140, 141(1), (2) and (4) and 142(1) and (2) (landlord's notices to complete, effect of failure to comply and right to defer completion).

129.—(1) Subject to the following provisions of this Part, a person exercising the right to buy is entitled to a discount of a percentage calculated by reference to the period which is to be taken into account in accordance with Schedule 4 (qualifying period for right to buy and discount).

Discount.

(2) The discount is—

- (a) in the case of a house, 32 per cent. plus one per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 60 per cent.;
- (b) in the case of a flat, 44 per cent. plus two per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 70 per cent.

(3) Where joint tenants exercise the right to buy, Schedule 4 shall be construed as if for the qualifying person there were substituted that one of the joint tenants whose substitution will produce the largest discount.

Reduction of discount where previous discount given.

130.—(1) There shall be deducted from the discount an amount equal to any previous discount qualifying, or the aggregate of previous discounts qualifying, under the provisions of this section.

(2) A “previous discount” means a discount given before the relevant time—

- (a) on conveyance of the freehold, or a grant or assignment of a long lease of a dwelling-house by a person within para 7 or 7A of Schedule 4 (public sector landlords), or
- (aa) on conveyance of the freehold, or a grant or assignment of a long lease of a dwelling-house by a person against whom the right to buy was exercisable by virtue of section 171A (preservation of right to buy on disposal to private sector landlord) to a person who was a qualifying person for the purposes of the preserved right to buy and in relation to whom that dwelling-house was the qualifying dwelling-house, or
- (b) in pursuance of the provision required by paragraph 1 of Schedule 8 (terms of shared ownership lease: right to acquire additional shares), or any other provision to the like effect.

(3) A previous discount qualifies for the purposes of this section if it was given—

- (a) to the person or one of the persons exercising the right to buy, or
- (b) to the spouse of that person or one of those persons (if they are living together at the relevant time), or
- (c) to a deceased spouse of that person or one of those persons (if they were living together at the time of the death);

and where a previous discount was given to two or more persons jointly, this section has effect as if each of them had been given an equal proportion of the discount.

(4) Where the whole or part of a previous discount has been recovered by the person by whom it was given (or a successor in title of his)—

- (a) by the receipt of a payment determined by reference to the discount, or
- (b) by a reduction so determined of any consideration given by that person (or a successor in title of his), or
- (c) in any other way,

then, so much of the discount as has been so recovered shall be disregarded for the purposes of this section.

(6) In this section “dwelling-house” includes any yard, garden, outhouses and appurtenances belonging to the dwelling-house or usually enjoyed with it.

Limits on amount of discount

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 the costs incurred by the landlord in respect of the dwelling-house and is to be treated as relevant for the purposes of this section;
- (b) if the price before discount is below that amount, there shall be no discount; and
- (c) the discount shall not in any case reduce the price by more than £35,000.

Change of qualifying person or landlord after service of notice claiming right to buy

Change of qualifying person after notice claiming right to buy.

136.—(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.

(2) If a notice under section 125 (landlord’s notice of purchase price and other matters) has been served on the former qualifying person, the landlord shall serve on the new qualifying person a notice informing him of the effect of sections 140, 141(1), (2) and (4) and 142(1) and (2) (landlord’s notices to complete, effect of failure to comply and right to defer completion).

(3) The new qualifying person may then serve a notice under section 142(1)(b) (qualifying person’s notice claiming to exercise right to defer completion) within three months beginning with service on him of the landlord’s notice under subsection (2) or within that period as extended in writing by the landlord.

(6) The preceding provisions of this section do not confer any right on a person required in pursuance of section 123 (claim to share right to buy with members of family) to share the right to buy, unless he could have been validly so required had the notice claiming to exercise the right to buy been given by the new qualifying person.

(7) The preceding provisions of this section apply with the necessary modifications if there is a further change in the person who is the qualifying person.

137.—(1) Where, other than in a case to which section 171D(1)(a) or section 171E(2)(a) applies (disposal to authority or body satisfying landlord condition for secure tenancies), the interest of the landlord in the dwelling-house passes from the landlord to another person after a qualifying person has given a notice claiming to exercise the right to buy, all parties shall subject to subsection (2) be in the same position as if the other person had become the landlord before the notice was given and had given that notice and any further notice given by the qualifying person to the landlord and had taken all steps which the landlord had taken.

Change of landlord after notice claiming right to buy.

- (2) If the circumstances after the disposal differ in any material respect, as for example where—
- (a) the interest of the donee in the dwelling-house after the disposal differs from that of the donor before the disposal, or
 - (c) any of the provisions of Schedule 5 (exceptions to the right to buy) becomes or ceases to become 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.

Completion of purchase in pursuance of right to buy

138.—(1) Where a qualifying person has claimed to exercise the right to buy and that right has been established, then, as soon as all matters relating to the grant have been agreed or determined, the landlord shall make to the qualifying person—

Duty of landlord to convey freehold or grant lease.

- (a) if the dwelling-house is a house and the landlord owns the freehold, a grant of the dwelling-house for an estate in fee simple absolute, or
- (b) if the landlord does not own the freehold or if the dwelling-house is a flat (whether or not the landlord owns the freehold), a grant of a lease of the dwelling-house,

in accordance with the following provisions of this Part.

(2) If the qualifying person has failed to pay the rent or any other payment due from him as a tenant for a period of four weeks after it has been lawfully demanded from him, the landlord is not bound to comply with subsection (1) while the whole or part of that payment remains outstanding.

(3) The duty imposed on the landlord by subsection (1) is enforceable by injunction.

139.—(1) A conveyance of the freehold executed in pursuance of the right to buy shall conform with Parts I and II of Schedule 6; a grant of a lease so executed shall conform with Parts I and III of that Schedule; and Part IV of that Schedule has effect in relation to certain charges.

Terms and effect of conveyance or grant.

(2) 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; and if there is then a subtenancy section 139 of the Law of Property Act 1925 (effect of extinguishment of reversion) applies as on a merger or surrender.

1925 c.20.

140.—(1) The landlord may, subject to the provisions of this section, serve on the qualifying person at any time a written notice requiring him—

Landlord's first notice to complete.

- (a) if all relevant matters have been agreed or determined, to complete the transaction within a period stated in the notice, or
- (b) if any relevant matters are outstanding, to serve on the landlord within that period a written notice to that effect specifying the matters,

and informing the qualifying person of the effect of this section and of section 141(1), (2) and (4) (landlord's second notice to complete).

(2) The period stated in a notice under this section shall be such period (of at least 56 days) as may be reasonable in the circumstances.

(3) A notice under this section shall not be served earlier than one year after the service on the qualifying person of—

- (a) where he exercises his right under section 128 (determination of value by district valuer), the notice under subsection (5) of that section (further notice by landlord after determination), or
- (b) where he does not exercise that right, the notice under section 125 (landlord's notice of purchase price and other matters).

(3A) Where the qualifying person is entitled to defer completion, a notice under this section shall not be served earlier than three years after service of the notice under section 122 (qualifying person's notice claiming to exercise right to buy), if that period expires after whichever is applicable of the periods specified in subsection (3).";

- (4) A notice under this section shall not be served if-
 - (b) proceedings for the determination of any relevant matter have not been disposed of, or
 - (c) any relevant matter stated to be outstanding in a written notice served on the landlord by the qualifying person has not been agreed in writing or determined.
- (5) In this section "relevant matters" means matters relating to the grant.

Landlord's second notice to complete.

141.—(1) If the qualifying person does not comply with a notice under section 140 (landlord's first notice to complete), the landlord may serve on him a further written notice—

- (a) requiring him to complete the transaction within a period stated in the notice, and
- (b) informing him of the effect of this section in the event of his failing to comply.

(2) The period stated in a notice under this section shall be such period (of at least 56 days) as may be reasonable in the circumstances.

(3) At any time before the end of that period (or that period as previously extended) the landlord may by a written notice served on the qualifying person extend it (or further extend it).

(4) If the qualifying person does not comply with a notice under this section the notice claiming to exercise the right to buy shall be deemed to be withdrawn at the end of that period (or as the case may require, that period as extended under subsection (3)).

(5) If a notice under this section has been served on the qualifying person and by virtue of section 138(2) (failure of qualifying person to pay rent, etc) the landlord is not bound to complete, the qualifying person shall be deemed not to comply with the notice.

When qualifying person is entitled to defer completion.

142.—(1) A qualifying person is entitled to defer completion if—

- (a) his reckonable amount calculated in accordance with Schedule 7A (or the aggregate of such amounts where the right to buy is being exercised by more than one person) is less than the purchase price of the dwelling-house;
- (b) he has, within the period mentioned below, served on the landlord a notice claiming to exercise the right to defer completion; and
- (c) he has, within the same period, deposited the sum of £150 with the landlord.

(2) The notice must be served and the sum of £150 deposited within the period of three months beginning with the service on the qualifying person

- (a) where he exercises his right under section 128 (determination of value by district valuer), of the notice under subsection (5) of that section (further notice by landlord after determination), or
- (b) where he does not exercise that right, of the notice under section 125 (landlord's notice of purchase price and other matters),

or within that period as extended in writing by the landlord.

(3) Where a qualifying person has served on the landlord a notice under subsection (1)(b), the landlord shall, as soon as practicable after the date on which the notice is served, serve on the qualifying person a notice either—

- (a) admitting the qualifying person's right to defer completion, or
- (b) denying it and stating the reasons why, in the landlord's opinion, the qualifying person does not have the right.

(4) If in pursuance of a notice under this section the qualifying person deposits the sum of £150 with the landlord, then—

- (a) if he completes the transaction, the sum shall be treated as having been paid towards the purchase price, and
- (b) if he does not complete the transaction but withdraws his notice claiming to exercise the right to buy, or is deemed to have withdrawn it by virtue of section 141(4) (effect of failure to comply with landlord's second notice to complete), the sum shall be returned to him.

Qualifying person's notices of delay.

153A.—(1) Where a qualifying person has claimed to exercise the right to buy, he may serve on his landlord a notice (in this section referred to as an "initial notice of delay") in any of the following cases, namely,—

- (a) where the landlord has failed to serve a notice under section 124 within the period appropriate under subsection (2) of that section;
- (b) where the tenant's right to buy has been established and the landlord has failed to serve a notice under section 125 within the period appropriate under subsection (1) of that section; or
- (e) where the tenant considers that delays on the part of the landlord are preventing him from exercising expeditiously his right to buy;

and where an initial notice of delay specifies either of the cases in paragraphs (a) and (b) any reference in this section or section 153B to the default date is a reference to the end of the period referred to in the paragraph in question.

(2) An initial notice of delay—

- (a) shall specify the most recent action of which the qualifying person is aware which has been taken by the landlord pursuant of this Part of this Act; and
- (b) shall specify a period (in this section referred to as “the response period”), not being 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 (3) will have the effect of cancelling the initial notice of delay.

(3) Within the response period specified in an initial notice of delay or at any time thereafter, the landlord may serve on the qualifying person a counter notice in either of the following circumstances—

- (a) if the initial notice specifies either of the cases in paragraphs (a) and (b) of subsection (1) and the landlord has served, or is serving together with the counter notice, the required notice under section 124 or section 125, as the case may be; or
- (b) if the initial notice specifies the case in subsection (1)(e) and 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 allow the qualifying person expeditiously to exercise his right to buy and which remains to be taken at the time of service of the counter notice.

(4) A counter notice under subsection (3) shall specify the circumstances by virtue of which it is served.

(5) At any time when—

- (a) the response period specified in an initial notice of delay has expired, and
- (b) the landlord has not served a counter notice under subsection (3),

the qualifying person may serve on the landlord a notice (in this section and section 153B referred to as an “operative notice of delay”) which shall state that section 153B will apply to payments of rent made by the qualifying person on or after the default date or, if the initial notice of delay specified the case in subsection (1)(e), the date of the service of the notice.

(6) If, after a qualifying person has served an initial notice of delay, a counter notice has been served under subsection (3), then, whether or not the qualifying person has also served an operative notice of delay, if any of the cases in subsection (1) again arises, the qualifying person may serve a further initial notice of delay and the provisions of this section shall apply again accordingly.

153B. (1) Where a qualifying person has served on his landlord an operative notice of delay, this section applies to any payment of rent which is made on or after the default date or, as the case may be, the date of the service of the notice and before the occurrence of any of the following events (and, if more than one event occurs, before the earliest to occur)—

- (a) the service by the landlord of a counter notice under section 153A(3);
- (b) the date on which the landlord makes to the qualifying person the grant required by section 138;
- (d) the date on which the qualifying person withdraws or is deemed to have withdrawn the notice claiming to exercise the right to buy; and
- (e) the date on which the qualifying person ceases to be entitled to exercise the right to buy.

(2) Except where this section ceases to apply on a date determined under paragraph (d) or (e) of subsection (1), so much of any payment of rent to which this section applies as does not consist of—

- (a) a sum due on account of rates, or
- (b) a service charge (as defined in section 621A),

shall be treated not only as a payment of rent but also as a payment on account by the qualifying person which is to be taken into account in accordance with subsection (3).

(3) In a case where subsection (2) applies, the amount which, apart from this section, would be the purchase price shall be reduced by an amount equal to the aggregate of—

- (a) the total of any payments on account treated as having been paid by the qualifying person by virtue of subsection (2); and
- (b) if those payments on account are derived from payments of rent referable to a period of more than twelve months, a sum equal to the appropriate percentage of the total referred to in paragraph (a).

(4) In subsection (3)(b) “the appropriate percentage” means 50 per cent.

Payments of rent attributable to purchase price etc.

Registration of title

Registration of title.
1925 c.21.

154.—(1) Where the landlord's title to the dwelling-house is not registered, section 123 of the Land Registration Act 1925 (compulsory registration of title) applies in relation to—

(a) the conveyance of the freehold or the grant of a lease in pursuance of this Part, whether or not the dwelling-house is in an area in which an Order in Council under section 120 of that Act is for the time being in force (areas of compulsory registration) and, in the case of a lease, whether or not the lease is granted for a term of more than 21 years.

(2) Where the landlord's title to the dwelling-house is not registered, the landlord shall give the qualifying person a certificate stating that the landlord is entitled to convey the freehold or make the grant subject only to such incumbrances, rights and interests as are stated in the conveyance or grant or summarised in the certificate.

(3) Where the landlord's interest in the dwelling-house is a lease, the certificate under subsection (2) shall also state particulars of that lease and, with respect to each superior title—

- (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 landlord's lease.

(4) A certificate under subsection (2) shall be—

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

(5) The Chief Land Registrar shall, for the purpose of the registration of title, accept such a certificate as sufficient evidence of the facts stated in it; but if as a result he has to meet a claim against him under the Land Registration Acts 1925 to 1986 the landlord is liable to indemnify him.

(6) Sections 8 and 22 of the Land Registration Act 1925 (application for registration of leasehold land and registration of dispositions of leasehold) apply in relation to a lease granted in pursuance of this Part 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.

Provisions affecting future disposals

Repayment of discount on early disposal.

155.—(1) A conveyance of the freehold or grant of a lease in pursuance of this Part may, at the discretion of the landlord, contain, unless there is no discount, a covenant binding on the qualifying person and his successors in title to the following effect, but not one the effect of which would be more onerous.

(2) The covenant shall be to pay to the landlord on demand, if within a period of three years there is a relevant disposal which is not an exempted disposal (but if there is more than one such disposal, then only on the first of them), the discount to which the qualifying person was entitled, reduced by one third for each complete year which has elapsed after the conveyance or grant and before the disposal.

(3A) Where a qualifying person has served on his landlord an operative notice of delay, as defined in section 153A—

- (a) the three years referred to in subsection (2) shall begin from a date which precedes the date of the conveyance of the freehold or grant of the lease by a period equal to the time (or, if there is more than one such notice, the aggregate of the times) during which, by virtue of section 153B, any payment of rent fails to be taken into account in accordance with subsection (3) of that section.

Liability to repay is a charge on the premises.

156.—(1) The liability that may arise under the covenant imposed by virtue of section 155 is a charge on the dwelling-house, taking effect as if it had been created by deed expressed to be by way of legal mortgage.

(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.

(3) A charge taking effect by virtue of this section is a land charge for the purposes of section 59 of the Land Registration Act 1925 notwithstanding subsection (5) of that section (exclusion of mortgages), and subsection (2) of that section applies accordingly with respect to its protection and realisation.

(3A) The covenant imposed by virtue of section 155 (covenant for repayment of discount) does not, by virtue of its binding successors in title of the qualifying person, bind a person exercising rights under a charge having priority over the charge taking effect by virtue of this section, or a person deriving title under him; and a provision of the conveyance or grant, or of a collateral agreement, is void in so far as it purports to authorise a forfeiture, or to impose a penalty or disability, in the event of any such person failing to comply with that covenant.

157.—(1) Where in pursuance of this Part a conveyance or grant is executed by a housing association (“the landlord”) of a dwelling-house situated in—

- (a) a National Park,
- (b) an area designated under section 87 of the National Parks and Access to the countryside Act 1949 as an area of outstanding beauty, or
- (c) an area designated by order of the Secretary of State as a rural area,

the conveyance or grant may contain a covenant limiting the freedom of the qualifying person (including any successor in title of his and any person deriving title under him or such a successor) to dispose of the dwelling-house in the manner specified below.

(2) The limitation is, subject to subsection (4), that until such time (if any) as may be notified in writing by the landlord to the qualifying person or a successor in title of his—

- (a) there will be no relevant disposal which is not an exempted disposal without the written consent of the landlord; but that consent shall not be withheld if the disposal is to a person satisfying the condition stated in subsection (3); and
- (b) there will be no disposal by way of tenancy or licence without the written consent of the landlord unless the disposal is to a person satisfying that condition or by a person whose only or principal home is and, throughout the duration of the tenancy or licence, remains the dwelling-house.

(3) The condition is that the person to whom the disposal is made (or, if it is made to more than one person, at least one of them) has, throughout the period of three years immediately preceding the application for consent or, in the case of a disposal by way of tenancy or licence, preceding the disposal —

- (a) had his place of work in a region designated by order of the Secretary of State which, or part of which, is comprised in the National Park or area, or
- (b) had his only or principal home in such a region;

or has had the one in part or parts of that period and the other in the remainder; but the region need not have been the same throughout the period.

(4) If the Housing Corporation consents, the limitations specified in subsection (2) may be replaced by the following limitation, that is to say, 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 in relation to that or a previous such disposal—

- (a) the qualifying person (or his successor in title or the person deriving title under him or his successor) has offered to reconvey the dwelling-house, or as the case may be surrender the lease, to the landlord for such consideration as is mentioned in section 158, and
- (b) the landlord has refused the offer or has failed to accept it within one month after it was made.

(5) The consent of the Housing Corporation under subsection (4) may be given subject to such conditions as the Corporation thinks fit.

(6) A disposal in breach of such a covenant as is mentioned in subsection (1) is void and, so far as it relates to disposals by way of tenancy or licence, such a conveyance may be enforced by the landlord as if—

- (a) the landlord were possessed of land adjacent to the house concerned; and
- (b) the covenant were expressed to be made for the benefit such adjacent land.

(6A) Any reference in the preceding provisions of this section to a disposal by way of tenancy or licence does not include a reference to a relevant disposal or an exempted disposal.

(7) Where such a covenant imposes the limitation specified in subsection (2), the limitation is a local land charge and the Chief Land Registrar shall enter the appropriate restriction on the register of title as if application therefor had been made under section 58 of the Land Registration Act 1925.

(8) An order under this section—

- (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
- (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution by either House of Parliament.

Restriction on disposal of dwelling-houses in National Parks, etc. 1949 c.97.

1925 c.21.

Consideration for re-conveyance or surrender under s. 157.

158.—(1) The consideration for the offer by a qualifying person (or his successor in title or a person deriving title under him or his successor), referred to in section 157(4)(a), to reconvey or surrender his interest to the landlord 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 as the value of the dwelling-house at the time the offer is made.

(2) That value shall be taken to be the price which, at that time, the interest to be reconveyed or surrendered would realise if sold on the open market by a willing vendor, on the assumption that any liability under—

(a) a covenant imposed by virtue of section 155 (repayment of discount on early disposal), would be discharged by the vendor.

(3) If the landlord accepts the offer, no payment shall be required in pursuance of any such covenant as is mentioned in subsection (2), but the consideration shall be reduced subject to subsection (4) by such amount (if any) as, on a disposal made at the time the offer was made, being a relevant disposal which is not an exempted disposal, would fall to be paid under that covenant.

(4) Where there is a charge on the dwelling-house having priority over the charge to secure payment of the sum due under the covenant mentioned in subsection (2), the consideration shall not be reduced under subsection (3) below the amount necessary to discharge the outstanding sum secured by the first-mentioned charge at the date of the offer to reconvey or surrender.

Relevant disposals.

159.—(1) A disposal, whether of the whole or part of the dwelling-house, is a relevant disposal for the purposes of this Part if it is—

(a) a further conveyance of the freehold or an assignment of the lease, or

(b) the grant of a lease (other than a mortgage term) for a term of more than 21 years otherwise than at a rack rent.

(2) For the purposes of subsection (1)(b) it shall be assumed—

(a) that any option to renew or extend a lease or sub-lease, whether or not forming part of a series of options, is exercised, and

(b) that any option to terminate a lease or sub-lease is not exercised.

Exempted disposals.

160.—(1) A disposal is an exempted disposal for the purposes of this Part if—

(a) it is a disposal of the whole of the dwelling-house and a further conveyance of the freehold or an assignment of the lease and the person or each of the persons to whom it is made is a qualifying person (as defined in subsection (2));

(b) it is a vesting of the whole of the dwelling-house in a person taking under a will or on an intestacy;

(c) it is a disposal of the whole of the dwelling-house in pursuance of an order made under section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings) or section 2 of the Inheritance (Provision for Family and Dependents) Act 1975 (orders as to financial provision to be made from estate);

(d) it is compulsory disposal (as defined in section 161); or

(e) it is a disposal of property consisting of land included in the dwelling-house by virtue of section 184 (land let with or used for the purposes of the dwelling-house).

(2) For the purposes of subsection (1)(a), a person is a qualifying person in relation to a disposal if—

(a) he is the person, or one of the persons, by whom the disposal is made,

(b) he is the spouse or a former spouse of that person, or one of those persons, or

(c) he is a member of the family of that person, or one of those persons, and has resided with him throughout the period of twelve months ending with the disposal.

Meaning of "compulsory disposal".

161. In this Part a "compulsory disposal" means a disposal of property which is acquired compulsorily, or is acquired by a person who has made or would have made, or for whom another person has made or would have made, a compulsory purchase order authorising its compulsory purchase for the purposes for which it is acquired.

Exempted disposals which end liability under covenants.

162. Where there is a relevant disposal which is an exempted disposal by virtue of section 160(1)(d) or (e) (compulsory disposals or disposals of land let with or used for purposes of dwelling-house)—

(a) a covenant imposed by virtue of section 155 (repayment of discount on early disposal) is not binding on the person to whom the disposal is made or any successor in title of his, and that covenant and the charge taking effect by virtue of section 156 cease to apply in relation to the property disposed of, and

(b) any such covenant as is mentioned in section 157 (restriction on disposal of dwelling-houses in National Parks, etc.) ceases to apply in relation to the property disposed of.

163.—(1) For the purposes of this Part the grant of an option enabling a person to call for a relevant disposal which is not an exempted disposal shall be treated as such a disposal made to him.

Treatment of options.

(2) For the purposes of section 157(2) (requirements of consent to disposal of dwelling-house in National Park, etc.) a consent to such a grant shall be treated as a consent to a disposal in pursuance of the option.

Preservation of right to buy on disposal to private sector landlord

171A.—(1) The provisions of this Part continue to apply where a person ceases to be a secure tenant of a dwelling-house by reason of the disposal by the landlord 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).

Cases in which right to buy is preserved.

(2) In this Part—

- (a) references to the preservation of the right to buy and to a person having the preserved right to buy are to the continued application of the provisions of this Part by virtue of this section and to a person in relation to whom those provisions so apply;
- (b) “qualifying disposal” means a disposal in relation to which this section applies, and
- (c) the “former secure tenant” and the “former landlord” are the persons mentioned in subsection (1).

(3) This section does not apply—

- (a) where the former landlord was a person against whom the right to buy could not be exercised by virtue of paragraph 1, 2 or 3 of Schedule 5 (charities and certain housing associations), or
- (b) in such other cases as may be excepted from the operation of this section by order of the Secretary of State.

(4) Orders under subsection (3)(b)—

- (a) may relate to particular disposals and may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
- (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

171B.—(1) A person to whom this section 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 Part.

Extent of preserved right: qualifying persons and dwelling-house.

(2) References in this Part 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 persons to whom this section applies—

- (a) the former secure tenant, or in the case of a joint tenancy, each of them;
- (b) a qualifying successor as defined in subsection (4); and
- (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 and, immediately before his death, the former secure tenant was tenant under an assured tenancy of a dwelling-house in relation to which he had the preserved right to buy, a member of the former secure tenant’s family who acquired that assured tenancy under the will or intestacy of the former secure tenant;
- (aa) where the former secure tenancy was not a joint tenancy, a member of the former secure tenant’s family to whom the former secure tenant assigned his assured tenancy of a dwelling-house in relation to which, immediately before the assignment, he had the preserved right to buy;
- (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, or
 - (ii) an order under Schedule 1 to the Matrimonial Homes Act 1983 transferring the tenancy,

1973 c.18.

1983 c.19.

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

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

(6) 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 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.

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

1985 c.6.

Modifica-
tions of this
Part in relation
to preserved
right.

171C.—(1) Where the right to buy is preserved, the provisions of this Part have effect subject to such exceptions, adaptations and other modifications as may be prescribed by regulations made by the Secretary of State.

- (2) The regulations may in particular provide—
- (a) that paragraphs 1, 3 and 5 to 11 of Schedule 5 (certain exceptions to the right to buy) do not apply;
 - (b) that the right to a mortgage is exercisable against the former landlord or, if the former landlord was a housing association, against the Housing Corporation;
 - (c) that the provisions of this Part relating to the right to be granted a shared ownership lease do not apply; and
 - (d) that the landlord is not required to but may include a covenant for the repayment of discount, provided its terms are no more onerous than those of the covenant provided for in section 155.

(3) The prescribed exceptions, adaptations and other modifications shall take the form of textual amendments of the provisions of this Part as they apply in cases where the right to buy is preserved; and the first regulations, and any subsequent consolidating regulations, shall set out the provisions of this Part as they so apply.

- (4) The regulations—
- (a) may make different provision for different cases or descriptions of case, including different provision for different areas,
 - (b) may contain such incidental, supplementary and transitional provisions as the Secretary of State considers appropriate, and
 - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) The disapplication by the regulations of paragraph 1 of Schedule 5 shall not be taken to authorise any action on the part of a charity which would conflict with the trusts of the charity.

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

171D.—(1) 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 9A applies (effect of failure to register entry protecting preserved right to buy),

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

(2) The disposal by the landlord of a qualifying dwelling-house of less than his whole interest as landlord of the dwelling-house, or in part of it, requires the consent of the Secretary of State, unless the disposal is to the qualifying person or persons.

(3) Consent may be given in relation to a particular disposal or generally in relation to disposals of a particular description and may, in either case, be given subject to conditions.

(4) A disposal made without the consent required by subsection (2) is void, except in a case where, by reason of a failure to make the entries on the land register or land charges register required by Schedule 9A, the preserved right to buy does not bind the person to whom the disposal is made.

171E.—(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
- (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 subsection (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 9A 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 subsection (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.

171F.—(1) 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 or on Ground 9 in Schedule 2 to the Housing Act 1988 (suitable alternative accommodation) unless the court is satisfied—

- (a) that the preserved right to buy will, by virtue of section 171B(6) (accommodation with same landlord or connected company), 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).

171G. Schedule 9A has effect with respect to registration of title and related matters arising in connection with the preservation of the right to buy.

171H.—(1) Where notice has been given in respect of a dwelling-house claiming to exercise the right to buy 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 section 171D(1)(a) or 171E(2)(a) applies (disposal to authority or body satisfying landlord condition for secure tenancies),

all parties shall, subject to subsection (2), be in the same position as if the donee 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 donee in the dwelling-house after the disposal differs from that of the donor before the disposal, 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.

Modifications of Leasehold Reform Act 1967 in relation to leases granted under this Part

172.—(1) Part I of the Leasehold Reform Act 1967 (enfranchisement and extension of long leaseholds) does not apply where, in the case of a tenancy or sub-tenancy to which this section applies, the landlord is a housing association and the freehold is owned by a body of persons or trust established for charitable purposes only.

(2) This section applies to a tenancy created by the grant of a lease in pursuance of this Part of a dwelling-house which is a house.

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

Subsequent dealings: transfer of qualifying person to alternative accommodation. 1977 c.42. 1988 c.50.

Land registration and related matters. Disposal after notice claiming to exercise right to buy, etc.

Exclusion of leases where landlord is housing association and freeholder is a charity. 1967 c.88.

(3) Where Part I of the 1967 Act applies as if there had been a single tenancy granted for a term beginning at the same time as the term under a tenancy falling within subsection (2) and expiring at the same time as the term under a later tenancy, this section also applies to that later tenancy.

(4) This section applies to any sub-tenancy directly or indirectly derived out of a tenancy falling within subsection (2) or (3).

Leases granted under this Part to be treated long leases at a low rent.

174. For the purposes of Part I of the Leasehold Reform Act 1967 (enfranchisement and extension of long leaseholds)—

(a) a tenancy created by the grant of a lease in pursuance of this Part of a dwelling-house which is a house shall be treated as being a long tenancy notwithstanding that it is granted for a term of 21 years or less.

Determination of price payable.

175.—(1) Where, in the case of a tenancy or sub-tenancy to which this section applies, the tenant exercises his right to acquire the freehold under Part I of the Leasehold Reform Act 1967, the price payable for the dwelling-house shall be determined in accordance with section 9(1A) of that Act notwithstanding that the rateable value of the dwelling-house does not exceed £1,000 in Greater London or £500 elsewhere.

(2) This section applies to a tenancy created by the grant of a lease in pursuance of this Part of a dwelling-house which is a house.

(3) Where Part I of the 1967 Act applies as if there had been a single tenancy granted for a term beginning at the same time as the term under a tenancy falling within subsection (2) and expiring at the same time as the term under a later tenancy, this section also applies to that later tenancy.

(4) This section applies to any sub-tenancy directly or indirectly derived out of a tenancy falling within subsection (2) or (3).

(5) This section also applies to a tenancy granted in substitution for a tenancy or sub-tenancy falling within subsections (2) to (4) in pursuance of Part I of the 1967 Act.

Supplementary Provisions

Notices.

176.—(3) A notice under this Part may be served by sending it by post.

(4) Where the landlord is a housing association, a notice to be served by the qualifying person on the landlord under this Part may be served by leaving it at, or sending it to, the principal office of the association or the office of the association with which the qualifying person usually deals.

Costs.

178.—(1) An agreement between—

(a) the landlord and a qualifying person claiming to exercise the right to buy, is void in so far as it purports to oblige the qualifying person to bear any part of the costs incurred by the landlord in connection with the qualifying person's exercise of that right.

Provisions restricting right to buy, etc of no effect.

179.—(1) A provision of a lease held by the landlord or a superior landlord, or of an agreement (whenever made), is void in so far as it purports to prohibit or restrict—

(a) the grant of a lease in pursuance of the preserved right to buy or

(b) the subsequent disposal (whether by way of assignment, sub-lease or otherwise) of a lease so granted

or to authorise a forfeiture, or impose on the landlord or superior landlord a penalty or disability, in the event of such a grant or disposal.

Statutory declarations.

180. A landlord may, if he thinks fit, accept a statutory declaration made for the purposes of this Part as sufficient evidence of the matters declared in it.

Jurisdiction of county court.

181.—(1) A county court has jurisdiction—

(a) to entertain any proceedings brought under this Part, and

(b) to determine any question arising under this part;

but subject to sections 128 and 158 (which provide for matters of valuation to be determined by the district valuer).

(2) The jurisdiction conferred by this section includes jurisdiction to entertain proceedings on any such question as is mentioned in subsection (1)(b) notwithstanding that no other relief is sought than a declaration.

(3) If a person takes proceedings in the High Court which, by virtue of this section, he could have taken in the county court, he is not entitled to recover any costs.

(4) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this section; and such rules or directions may provide—

- (a) for the exercise by a registrar of a county court of any jurisdiction exercisable under this section, and
- (b) for the conduct of proceedings in private.

(5) The power to make rules under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

183.—(1) The following provisions apply to the interpretation of “house”, “flat” and “dwelling-house” when used in this Part.

Meaning of “house”, “flat” and “dwelling-house”.

(2) A dwelling-house is a house if, and only if, it (or so much of it as does not consist of land included by virtue of section 184) is a structure reasonably so called; so that—

- (a) where a building is divided horizontally, the flats or other units into which it is divided are not houses;
- (b) where a building is divided vertically, the units into which it is divided may be houses;
- (c) where a building is not structurally detached, it is not a house if a material part of it lies above or below the remainder of the structure.

(3) A dwelling-house which is not a house is a flat.

184.—(1) For the purpose of this Part land let together with a dwelling-house shall be treated as part of the dwelling-house, unless the land is agricultural land (within the meaning set out in section 26(3)(a) of the General Rate Act 1967) exceeding two acres.

Land let with or used for purposes of dwelling-house.
1967 c.9.

(2) There shall be treated as included in a dwelling-house any land which is not within subsection (1) but is or has been used for the purpose of the dwelling-house if—

- (a) the qualifying person, by a written notice served on the landlord at any time before he exercises the right to buy, requires the land to be included in the dwelling-house, and
- (b) it is reasonable in all the circumstances for the land to be so included.

(3) A notice under subsection (2) may be withdrawn by a written notice served on the landlord at any time before the qualifying person exercises the right to buy.

(4) Where a notice under subsection (2) is served or withdrawn after the service of the notice under section 125 (landlord’s notice of purchase price, etc), the parties shall, as soon as practicable after the service or withdrawal, take all such steps (whether by way of amending, withdrawing or 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 in if the notice under subsection (2) had been served or withdrawn before the service of the notice under section 125.

185.—(1) References in this Part to a secure tenancy or a secure tenant in relation to a time before 26th August 1984 are to a tenancy which would have been a secure tenancy if Chapter II of Part I of the Housing Act 1980 and Part I of the Housing and Building Control Act 1984 had then been in force or to a person who would then have been a secure tenant.

Meaning of “secure tenancy” and “secure tenant”.
1980 c.51.
1984 c.29.

(2) For the purpose of determining whether a person would have been a secure tenant and his tenancy a secure tenancy—

- (a) a predecessor of a local authority shall be deemed to have been such an authority, and
- (b) a housing association shall be deemed to have been registered if it is or was so registered at any later time.

186.—(1) A person is a member of another’s family within the meaning of this Part if—

Member of a person’s family.

- (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) an illegitimate child shall be treated as the legitimate child of his mother and reputed father.

Minor definitions.

187. In this Part—

“improvement” means in relation to a dwelling-house any alteration in, or addition to, the dwelling-house and includes—

- (a) any addition to, or alteration in, landlord’s fixtures and fittings and any addition or alteration connected with the provision of services to the dwelling-house,
- (b) the erection of a wireless or television aerial, and
- (c) the carrying out of external decoration;

and shall be similarly construed in relation to any other building or land;

“improvement contribution” means an amount payable by a tenant of a flat in respect of improvements to the flat, the building in which it is situated or any other building or land, other than works carried out in discharge of any such obligations as are referred to in paragraph 16A(1) of Schedule 6 (obligations to repair, reinstate, etc);

“long tenancy” means—

- (a) a long tenancy within the meaning of Part IV, or
- (c) a tenancy falling within paragraph 1 of Schedule 2 to the Housing (Northern Ireland) Order 1983;

and “long lease” shall be construed accordingly.

S.I. 1983/1118 (N.I. 15).

Index of defined expressions: Part V.

188. The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used in the same section or paragraph):—

| | |
|---|--------------------------------------|
| assured tenancy | section 622 |
| cemetery | section 622 |
| charity | section 622 |
| compulsory disposal | section 161 |
| co-operative housing association | section 5(2) |
| disposal and instrument effecting disposal (in Schedule 9A) | paragraph 10 of that Schedule |
| dwelling-house | sections 183 and 184 |
| exempted disposal | section 160 |
| family (member of) | section 186 |
| flat | section 183 |
| former landlord and former secure tenant (in relation to a qualifying disposal) | section 171A(2)(c) |
| house | section 183 |
| housing association | section 5(1) |
| improvement | section 187 |
| improvement contribution | section 187 |
| incumbrances | paragraph 7 of Schedule 6 |
| lease | section 621 |
| local authority | section 4(e) |
| local housing authority | section 1, 2(2) |
| long tenancy (and long lease) | section 187 |
| new town corporation | section 4(b) |
| preserved right to buy | section 171A(2)(a) |
| public sector tenancy (and public sector tenant) | paragraphs 6 to 10 of Schedule 4 |
| purchase price | section 126 |
| qualifying disposal (in relation to the preserved right to buy) | section 171A(2)(b) |
| qualifying dwelling-house and qualifying person (in relation to the preserved right to buy) | section 171B(1) |
| qualifying successor | section 171B(4) |
| reference period (for purposes of s.125A or 125B) | section 125C |
| registered (in relation to a housing association) | section 5(4) |
| regular armed forces of the Crown | section 622 |
| relevant disposal | section 159 (and see section 452(3)) |
| relevant time | section 122(2) |
| right to be granted a shared ownership lease | section 143 |

| | |
|----------------------------------|---------------------------|
| right to buy | section 118(1) |
| right to a mortgage | section 132 |
| secure tenancy and secure tenant | sections 79 and 185 |
| service charge | section 621A |
| tenant's incumbrance | paragraph 7 of Schedule 6 |
| urban development corporation | section 4(d) |

SCHEDULE 4

Sections 119 and 129.

QUALIFYING PERIOD FOR RIGHT TO BUY AND DISCOUNT

Introductory

1. The period to be taken into account—

- (a) for the purposes of section 119 (qualification for right to buy), and
- (b) for the purposes of section 129 (discount),

is the period qualifying, or the aggregate of the periods qualifying, under the following provisions of this Schedule.

Periods occupying accommodation subject to public sector tenancy

2. A period qualifies under this paragraph if it is a period during which, before the relevant time—

- (a) the qualifying person, or
- (b) his spouse (if they are living together at the relevant time) or
- (c) a deceased spouse of his (if they were living together at the time of the death),

was a public sector tenant or was the spouse of a public sector tenant and occupied as his only or principal home the dwelling-house of which the spouse was such a tenant.

3. For the purposes of paragraph 2 a person who, as a joint tenant under a public sector tenancy, occupied a dwelling-house as his only or principal home shall be treated as having been the public sector tenant under that tenancy.

4.—(1) This paragraph applies where the public sector tenant of a dwelling-house died or otherwise ceased to be a public sector tenant of the dwelling-house, and thereupon a child of his who occupied the dwelling-house as his only or principal home (the "new tenant") became the public sector tenant of the dwelling-house (whether under the same or under another public sector tenancy).

(2) A period during which the new tenant, since reaching the age of 16, occupied as his only or principal home a dwelling-house of which a parent of his was the public sector tenant or one of joint tenants under a public sector tenancy, being either—

- (a) the period at the end of which he became the public sector tenant, or
- (b) an earlier period ending two years or less before the period mentioned in paragraph (a) or before another period within this paragraph,

shall be treated for the purposes of paragraph 2 as a period during which he was a public sector tenant.

(3) For the purposes of this paragraph two persons shall be treated as parent and child if they would be so treated under section 186(2) (members of a person's family: relationships other than those of the whole blood).

Periods occupying forces accommodation

5. A period qualifies under this paragraph if it is a period during which, before the relevant time—

- (a) the qualifying person, or
- (b) his spouse (if they are living together at the relevant time), or
- (c) a deceased spouse of his (if they were living together at the time of the death),

occupied accommodation provided for him as a member of the regular armed forces of the Crown or was the spouse of a person occupying accommodation so provided and also occupied that accommodation.

Periods during which right to buy is preserved

5A. A period qualifies under this paragraph if it is a period during which, before the relevant time—

- (a) the qualifying person, or
- (b) his spouse (if they are living together at the relevant time), or
- (c) a deceased spouse of his (if they were living together at the time of the death),

was a qualifying person for the purposes of the preserved right to buy or was the spouse of such a person and occupied the qualifying dwelling-house as his only or principal home.

Meaning of "public sector tenant"

6.—(1) In this Schedule a "public sector tenant" means a tenant under a public sector tenancy.

(2) For the purposes of this Schedule, a tenancy, other than a long tenancy, under which a dwelling-house was let as a separate dwelling was a public sector tenancy at any time when the conditions described below as the landlord condition and the tenant condition were satisfied.

(3) The provisions of this Schedule apply in relation to a licence to occupy a dwelling-house (whether or not granted for a consideration) as they apply in relation to a tenancy.

(4) Sub-paragraph (3) does not apply to a licence granted as a temporary expedient to a person who entered the dwelling-house or any other land as a trespasser (whether or not, before the grant of that licence, another licence to occupy that or another dwelling-house had been granted to him).

The landlord condition

7.—(1) The landlord condition is, subject to paragraph 7A, that the interest of the landlord belonged to, or to a predecessor of—

- a local authority,
- a new town corporation,
- a housing action trust,
- the Development Board for Rural Wales,
- an urban development corporation,
- the Housing Corporation,
- a registered housing association which is not a co-operative housing association,

or to, or to a predecessor of, an authority or other body falling within sub-paragraph (2) or (3) (corresponding authorities and bodies in Scotland and Northern Ireland),

(2) The corresponding authorities and bodies in Scotland are—

- a regional, islands or district council,
- a joint board or joint committee of such a council,
- the common good of such a council or a trust under its control,
- a development corporation established by an order made or having effect as if made under the New Towns (Scotland) Act 1968,
- the Scottish Special Housing Association,
- a housing association which falls within paragraph (e) of section 10(2) of the Tenants' Rights, Etc. (Scotland) Act 1980 but is not a registered society within the meaning of section 11 of that Act.

1968 c.16.

1980 c.52.

(3) The corresponding authorities and bodies in Northern Ireland are—

- a district council within the meaning of the Local Government Act (Northern Ireland) 1972,
- the Northern Ireland Housing Executive, and
- a registered housing association within the meaning of Chapter II of Part II of the Housing (Northern Ireland) Order 1983.

1972 c.9 (N.I.).

S.I. 1983/1118
(N.I. 15).

(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 community council,
- an education and library board established under the Education and Libraries (Northern Ireland) Order 1986,
- 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,
- a Minister of the Crown,
- a parish council and the trustees of a parish without a parish council,

1947 c.54.

S.I. 1986/594
(N.I. 3).

1976 c.70.

| | |
|---|------------------------------|
| a passenger transport executive established under Part II of the Transport Act 1968, | 1968 c.73. |
| a police authority, | |
| a water authority established in accordance with section 2 of the Water Act 1973 and a water authority in Scotland as constituted under section 3 of the Water (Scotland) Act 1980, | 1973 c.37. 1980 c.45. |
| the Agricultural and Food Research Council, | |
| the AFRC Institute for Grassland and Animal Production, | |
| the British Airports' Authority, | |
| the British Broadcasting Corporation, | |
| the British Coal Corporation, | |
| the British Gas Corporation, | |
| the British Railways Board, | |
| the British Steel Corporation, | |
| the British Waterways Board, | |
| the Central Electricity Generating Board, | |
| the Church Commissioners, | |
| the Civil Aviation Authority, | |
| the Commissioners of Northern Lighthouses, | |
| the Countryside Commission for Scotland, | |
| the Electricity Council, | |
| the Fire Authority for Northern Ireland constituted under the Fire Services (Northern Ireland) Order 1984, | S.I. 1984/1821 (N.I. 11). |
| the Highlands and Islands Development Board, | |
| the Historic Buildings and Monuments Commission for England, | |
| the Lake District Special Planning Board, | |
| the Lee Valley Regional Park Authority, | |
| London Regional Transport, | |
| the Medical Research Council, | |
| the National Bus Company, | |
| the National Library of Wales, | |
| the National Museum of Wales, | |
| 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, | S.I. 1972/1072 (N.I. 9). |
| the Northern Ireland Transport Holding Company established under the Transport Act (Northern Ireland) 1967, | 1967 c.37 (N.I.). |
| 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 Sports Council for Northern Ireland, | |
| the Trinity House, | |
| the United Kingdom Atomic Energy Authority, | |
| the Welsh Development Agency. | |

(5) The landlord condition is not satisfied 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.

1894 c.60.

7A.—(1) The landlord condition shall be treated as having been satisfied in the case of a dwelling-house comprised in a housing co-operative agreement made—

- (a) in England and Wales, by a local housing authority, new town corporation or the Development Board for Rural Wales, or
- (b) in Scotland, by an islands or district council,

if the interest of the landlord belonged to the housing co-operative.

1975 c.28.

- (2) In sub-paragraph (1) "housing co-operative agreement" and "housing co-operative"—
- (a) as regards England and Wales have the same meaning as in section 27B (agreements with housing co-operatives under superseded provisions), and
 - (b) as regards Scotland mean an agreement made under section 5 of the Housing Rents and Subsidies (Scotland) Act 1975 and a housing co-operative within the meaning of that section.

The tenant condition

9.—(1) The tenant condition is that the tenant was an individual and occupied the dwelling-house as his only or principal home; or, where the tenancy was a joint tenancy, that each of the joint tenants was an individual and at least one of them occupied the dwelling-house as his only or principal home.

Application to certain housing association tenancies

1985 c.69.

10. For the purpose of determining whether at any time a tenant of a housing association was a public sector tenant and his tenancy a public sector tenancy, the association shall be deemed to have been registered at that time, under the Housing Associations Act 1985 or the corresponding Northern Ireland legislation, if it was so registered at any later time.

SCHEDULE 5

Section 120.

EXCEPTIONS TO THE RIGHT TO BUY

Certain housing associations

2. The right to buy does not arise if the landlord is a co-operative housing association.

Landlord with insufficient interest in the property

4. The right to buy does not arise unless the landlord owns the freehold or has an interest sufficient to grant a lease in pursuance of this Part for—

- (a) where the dwelling-house is a house, a term exceeding 21 years, or
 - (b) where the dwelling-house is a flat, a term of not less than 50 years,
- commencing, in either case, with the date on which the qualifying person's notice claiming to exercise the right to buy is served.

Dwelling-houses let in connection with employment

5.—(1) The right to buy does not arise if the dwelling-house—

- (a) forms part of, or is within the curtilage of, a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and
- (b) was let to the qualifying person or a predecessor in title of his in consequence of the qualifying person or predecessor being in the employment of the landlord or of—
 - a local authority,
 - a new town corporation,
 - a housing action trust,
 - the Development Board for Rural Wales,
 - a urban development corporation, or
 - the governors of an aided school.

(2) In sub-paragraph (1)(a) "housing purposes" means the purposes for which dwelling-houses are held by local housing authorities under Part II (provision of housing) or purposes corresponding to those purposes.

Certain dwelling-houses for the disabled

7. The right to buy does not arise if the dwelling-house has features which are substantially different from those of ordinary dwelling-houses and are designed to make it suitable for occupation by physically disabled persons, and—

- (a) it is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by physically disabled persons, and

- (b) a social service or special facilities are provided in close proximity to the group of dwelling-houses wholly or partly for the purpose of assisting those persons.

9.—(1) The right to buy does not arise if—

- (a) the dwelling-house is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons who are suffering or have suffered from a mental disorder, and
- (b) a social service or special facilities are provided wholly or partly for the purpose of assisting those persons.

(2) In sub-paragraph (1)(a) “mental disorder” has the same meaning as in the Mental Health Act 1983.

1983 c.20.

Certain dwelling-houses for persons of pensionable age

10.—(1) The right to buy does not arise if the dwelling-house is one of a group of dwelling-houses—

- (a) which are particularly suitable, having regard to their location, size, design, heating systems and other features, for occupation by persons of pensionable age, and
- (b) which it is the practice of the landlord to let for occupation by persons of pensionable age, or for occupation by such persons and physically disabled persons,

and special facilities such as are mentioned in sub-paragraph (2) are provided wholly or mainly for the purposes of assisting those persons.

(2) The facilities referred to above are facilities which consist of or include—

- (a) the services of a resident warden, or
- (b) the services of a non-resident warden, a system for calling him and the use of a common room in close proximity to the group of dwelling-houses.

11.—(1) The right to buy does not arise if the dwelling-house—

- (a) is particularly suitable for occupation by persons of pensionable age, having regard—
 - (i) to its location, and
 - (ii) to its size, design, heating system and other major features so far as those have been provided by the landlord, a previous tenant or a person qualified to succeed the tenant under section 17 of the Housing Act 1988 (succession to assured periodic tenancy by spouse),
- (b) was let to the qualifying person or a predecessor in title of his for occupation by a person of pensionable age or a physically disabled person (whether the qualifying person or predecessor or another person).

1988 c.50.

(2) In determining whether a dwelling is particularly suitable, regard shall be had as to whether the dwelling—

- (a) is easily accessible on foot;
- (b) is on one level;
- (c) being a flat located above ground floor, access by lift is available;
- (d) has no more than two bedrooms;
- (e) has a heating system serving the living room and at least one bedroom.

Dwelling-houses held on Crown tenancies

12.—(1) The right to buy does not arise if the dwelling-house is held by the landlord on a tenancy from the Crown, unless—

- (a) the landlord is entitled to grant a lease in pursuance of this Part without the concurrence of the appropriate authority, or
- (b) the appropriate authority notifies the landlord that as regards any Crown interest affected the authority will give its consent to the granting of such a lease.

(2) In this paragraph “tenancy from the Crown” means a tenancy of land in which there is a Crown interest superior to the tenancy, and “Crown interest” and “appropriate authority” mean respectively—

- (a) an interest comprised in the Crown Estate, and the Crown Estate Commissioners or other government department having the management of the land in question;
- (b) an interest belonging to Her Majesty in right of the Duchy of Lancaster, and the Chancellor of the Duchy;
- (c) an interest belonging to the Duchy of Cornwall, and such person as the Duke of Cornwall or the possessor for the time being of the Duchy appoints;
- (d) any other interest belonging to a government department or held on behalf of Her Majesty for the purposes of a government department, and that department.

(3) Section 179(1) (which renders ineffective certain provisions restricting the grant of leases under this Part) shall be disregarded for the purposes of sub-paragraph (1)(a).

LIMITS ON AMOUNT OF DISCOUNT
RELEVANT COSTS*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 as relevant costs if, and only to the extent that, they are not administrative costs or interest.

3.—(1) Works of improvement to a dwelling-house are relevant works but works of repair or maintenance or works to deal with any defect affecting the dwelling-house are not 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 etc.) or the works will be carried out under the proposed terms of the conveyance or grant.

Ascertainment of cost floor

5.—(1) The cost floor is an amount equal to the aggregate of the costs which under subparagraph (2) may be treated as relevant costs.

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

- (a) the acquisition of the dwelling-house, and
- (b) the construction of the dwelling-house (including development works and the acquisition of land), or
- (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 subparagraph (2)(a).

Estimates

6. 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.

Companies

7.—(1) In a case where a landlord is a company, references to the landlord in paragraphs 4(a) and 5(2) 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.

CONVEYANCE OF FREEHOLD AND GRANT OF LEASE IN
PURSUANCE OF RIGHT TO BUY

PART I
COMMON PROVISIONS

Rights to be conveyed or granted—general

1. The conveyance or grant shall not exclude or restrict the general words implied under section 62 of the Law of Property Act 1925, unless the qualifying person consents or the exclusion or restriction is made for the purpose of preserving or recognising an existing interest of the landlord in tenant's incumbrances or an existing right of interest of another person. 1925 c.20.

Rights of support, passage of water, etc.

2.—(1) The conveyance or grant shall, by virtue of this Schedule, have the effect stated in subparagraph (2) as regards—

- (a) rights of support for a building or part of a building;
- (b) rights to the access of light and air to a building or part of a building;
- (c) rights to the passage of water or of gas or other piped fuel, or to the drainage or disposal of water, sewage, smoke or fumes, or to the use or maintenance of pipes or other installations for such passage, drainage or disposal;
- (d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline of visual or other wireless transmissions.

(2) The effect is—

- (a) to grant with the dwelling-house all such easements and rights over other property, so far as the landlord is capable of granting them, as are necessary to secure to the qualifying person as nearly as may be the same rights as at the relevant time were available to him under or by virtue of his tenancy or an agreement collateral to it, or under or by virtue of a grant, reservation or agreement made on the severance of the dwelling-house from other property then comprised in the same tenancy; and
- (b) to make the dwelling-house subject to all such easements and rights for the benefit of other property as are capable of existing in law and are necessary to secure to the person interested in the other property as nearly as may be the same rights as at the relevant time were available against the qualifying person under or by virtue of his tenancy or an agreement collateral to it, or under or by virtue of a grant, reservation or agreement made as mentioned in paragraph (a).

(3) This paragraph—

- (a) does not restrict any wider operation which the conveyance or grant may have apart from this paragraph; but
- (b) is subject to any provision to the contrary that may be included in the conveyance or grant with the consent of the qualifying person.

Rights of way

3. The conveyance or grant shall include—

- (a) such provisions (if any) as the qualifying person may require for the purpose of securing to him rights of way over land not comprised in the dwelling-house, so far as the landlord is capable of granting them, being rights of way that are necessary for the reasonable enjoyment of the dwelling-house; and
- (b) such provisions (if any) as the landlord may require for the purpose of making the dwelling-house subject to rights of way necessary for the reasonable enjoyment of other property, being property in which at the relevant time the landlord has an interest, or to rights of way granted or agreed to be granted before the relevant time by the landlord or by the person then entitled to the reversion on the tenancy.

Covenants and conditions

4. The conveyance or grant shall include such provisions (if any) as the landlord may require to secure that the qualifying person is bound by, or to indemnify the landlord against breaches of, restrictive covenants (that is to say, covenants or agreements restrictive of the use of any land

or premises) which affect the dwelling-house otherwise than by virtue of the qualifying person's tenancy or an agreement collateral to it and are enforceable for the benefit of other property.

5. Subject to paragraph 6, and to Parts II and III of this Schedule, the conveyance or grant may include such covenants and conditions as are reasonable in the circumstances.

No charge to be made for landlord's consent or approval

6. A provision of the conveyance or lease is void in so far as it purports to enable the landlord to charge the transferee or grantee a sum for or in connection with the giving of a consent or approval.

Meaning of "incumbrances" and "tenant's incumbrance"

7. In this Schedule—

"incumbrances" includes personal liabilities attaching in respect of the ownership of land or an interest in land though not charged on the land or interest; and

"tenant's incumbrance" means—

- (a) an incumbrance on the qualifying person's tenancy which is also an incumbrance on the reversion, and
- (b) an interest derived, directly or indirectly, out of that tenancy.

PART II CONVEYANCE OF FREEHOLD

General

1925 c.20.

8. The conveyance shall not exclude or restrict the all estate clause implied under section 63 of the Law of Property Act 1925, unless the qualifying person consents or the exclusion or restriction is made for the purpose of preserving or recognising an existing interest of the landlord in tenant's incumbrances or an existing right or interest of another person.

9.—(1) The conveyance shall be of an estate in fee simple absolute, subject to—

- (a) tenant's incumbrances,
- (b) burdens (other than burdens created by the conveyance) in respect of the upkeep or regulation for the benefit of any locality of any land, building, structure, works, ways or watercourses;

but otherwise free from incumbrances.

(2) Nothing in sub-paragraph (1) shall be taken as affecting the operation of paragraph 5 of this Schedule (reasonable covenants and conditions).

Covenants

10. The conveyance shall be expressed to be made by the landlord as beneficial owner (thereby implying the covenant set out in Part I of Schedule 2 to the Law of Property Act 1925 (covenant for title)).

PART III LEASES

General

11. A lease shall be for the appropriate term defined in paragraph 12 (but subject to sub-paragraph (3) of that paragraph) and at a rent not exceeding £10 per annum, and the following provisions have effect with respect to the other terms of the lease.

The appropriate term

12.—(1) If at the time the grant is made the landlord's interest in the dwelling-house is not less than a lease for a term of which more than 125 years and five days are unexpired, the appropriate term is a term of not less than 125 years.

(2) In any other case the appropriate term is a term expiring five days before the term of the landlord's lease of the dwelling-house (or, as the case may require, five days before the first date on which the term of any lease under which the landlord holds any part of the dwelling-house) is to expire.

Common use of premises and facilities

13. Where the dwelling-house is a flat and the qualifying person enjoyed, during his tenancy, the use in common with others of any premises, facilities or services, the lease shall include rights to the like enjoyment, so far as the landlord is capable of granting them, unless otherwise agreed between the landlord and the qualifying person.

Covenants by the landlord

14.—(1) This paragraph applies where the dwelling-house is a flat.

(2) There are implied covenants by the landlord—

- (a) to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure;
- (b) to keep in repair any other property over or in respect of which the tenant has rights by virtue of this Schedule;
- (c) to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.

(3) There is an implied covenant that the landlord shall rebuild or reinstate the dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure.

(3A) Sub-paragraphs (2) and (3) have effect subject to paragraph 15(3) (certain obligations not to be imposed, where landlord's title is leasehold, by reason of provisions of superior lease).

(4) The county court may, by order made with the consent of the parties, authorise the inclusion in the lease or in an agreement collateral to it of provisions excluding or modifying the obligations of the landlord under the covenants implied by this paragraph, if it appears to the court that it is reasonable to do so.

15.—(1) This paragraph applies where the landlord's interest in the dwelling-house is leasehold.

(2) There is implied a covenant by the landlord to pay the rent reserved by the landlord's lease and, except in so far as they fall to be discharged by the tenant, to discharge its obligations under the covenants contained in that lease.

(3) A covenant implied by virtue of paragraph 14 (implied covenants where dwelling-house is a flat) shall not impose on the landlord an obligation which the landlord is not entitled to discharge under the provisions of the landlord's lease or a superior lease.

(4) Where the landlord's lease or a superior lease, or an agreement collateral to the landlord's lease or a superior lease, contains a covenant by a person imposing obligations which, but for sub-paragraph (3), would be imposed by a covenant implied by virtue of paragraph 14, there is implied a covenant by the landlord to use its best endeavours to secure that that person's obligations under the first-mentioned covenant are discharged.

Covenant by tenant

16. Unless otherwise agreed between the landlord and the qualifying person, there is implied a covenant by the tenant—

- (a) where the dwelling-house is a house, to keep the dwelling-house in good repair (including decorative repair);
- (b) where the dwelling-house is a flat, to keep the interior of the dwelling-house in such repair.

Service charges and other contributions payable by the tenant

16A.—(1) The lease may require the tenant to bear a reasonable part of the costs incurred by the landlord—

- (a) in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2) (repairs, making good structural defects, provision of services, etc.), or
- (b) in insuring against the obligations imposed by the covenant implied by virtue of paragraph 14(3) (rebuilding or reinstatement, etc.),

and to the extent that by virtue of paragraph 15(3) (effect of provision of superior lease) such obligations are not imposed on the landlord, to bear a reasonable part of the costs incurred by the landlord in contributing to costs incurred by a superior landlord or other person in discharging or, as the case may be, insuring against obligations to the like effect.

(2) Where the lease requires the tenant to contribute to the costs of insurance, it shall provide that the tenant is entitled to inspect the relevant policy at such reasonable times as may be specified in the lease.

(3) Where the landlord does not insure against the obligations imposed by the covenant implied by virtue of paragraph 14(3), or, as the case may be, the superior landlord or other person does not insure against his obligations to the like effect, the lease may require the tenant to pay a reasonable sum in place of the contribution he could be required to make if there were insurance.

(4) Where in any case the obligations imposed by the covenants implied by virtue of paragraph 14(2) or (3) are modified in accordance with paragraph 14(4) (power of county court to authorise modification), the references in this paragraph are to the obligations as so modified.

(5) This paragraph has effect subject to paragraph 16B (restrictions in certain cases as regards costs incurred in the initial period of the lease).

16B.—(1) Where a lease of a flat requires the tenant to pay service charges in respect of repairs (including works for the making good of structural defects), his liability in respect of costs incurred in the initial period of the lease is restricted as follows.

(2) He is not required to pay in respect of works itemised in the estimates contained in the landlord's notice under section 125 any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.

(3) He is not required to pay in respect of works not so itemised at a rate exceeding—

- (a) as regards parts of the initial period falling within the reference period for the purposes of the estimates contained in the landlord's notice under section 125, the estimated annual average amount shown in the estimates;
- (b) as regards parts of the initial period not falling within that reference period, the average rate produced by averaging over the reference period all works for which estimates are contained in the notice;

together, in each case, with an inflation allowance.

(4) The initial period of the lease for the purposes of this paragraph begins with the grant of the lease and ends five years after the grant, except that—

- (a) if the lease includes provision for service charges to be payable in respect of costs incurred in a period before the grant of the lease, the initial period begins with the beginning of that period;
- (b) if the lease provides for service charges to be calculated by reference to a specified annual period, the initial period continues until the end of the fifth such period beginning after the grant of the lease; and
- (c) if the qualifying person served notice under section 142 deferring completion, the initial period ends on the date on which it would have ended if the lease had been granted on the date on which the notice was served.

16C.—(1) Where a lease of a flat requires the tenant to pay improvement contributions, his liability in respect of costs incurred in the initial period of the lease is restricted as follows.

(2) He is not required to make any payment in respect of works for which no estimate was given in the landlord's notice under section 125.

(3) He is not required to pay in respect of works for which an estimate was given in that notice any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.

(4) The initial period of the lease for the purposes of this paragraph begins with the grant of the lease and ends five years after the grant, except that—

- (a) if the lease includes provision for improvement contributions to be payable in respect of costs incurred in a period before the grant of the lease, the initial period begins with the beginning of that period;
- (b) if the lease provides for improvement contributions to be calculated by reference to a specified annual period, the initial period continues until the end of the fifth such period beginning after the grant of the lease; and
- (c) if the qualifying person served notice under section 142 deferring completion, the initial period ends on the date on which it would have ended if the lease had been granted on the date on which the notice was served.

Inflation allowances

16E. The inflation allowance for the purposes of paragraphs 16B(2) and 16C(3) shall be calculated, in respect of each item, by the formula—

$$I = \left(E \times \frac{C}{P} \right) - E$$

where—

C = the index figure relating to the last date in the initial period on which costs were incurred in respect of the item (whether or not such costs were the full costs incurred in respect of that item),

E = the amount shown in the estimates contained in the notice under section 125 (landlord's notice of purchase price etc.) as the tenant's estimated contribution in respect of that item,

I = the inflation allowance,

P = the index figure relating to the date on which the landlord served the notice on the qualifying person, and

the "index figure" is an index figure in the "Public sector housing repair and maintenance cost index" in the "Housing and Construction Statistics" published from time to time by Her Majesty's Stationery Office, but does not include a provisional index figure.

16F.—(1) The inflation allowance for the purposes of paragraph 16B(3)(a) shall be calculated by the formula—

$$I = \left(A \times \frac{C}{P} \right) - A$$

(2) The inflation allowance for the purposes of paragraph 16B(3)(b) shall be calculated by the formula—

$$I = \left(R \times \frac{C}{P} \right) - R$$

(3) In this paragraph—

(i) A = the amount shown in the estimates contained in the notice under section 125 (landlord's notice of purchase price etc.) as the estimated annual average amount,

C = the index figure relating to the date on which the tenant is required to pay the relevant charge for which the inflation allowance is being calculated, or, if earlier, the date the initial period ends,

I = the inflation allowance,

P = the index figure relating to the date on which the landlord served the notice on the qualifying person, and

R = the average rate produced by averaging over the reference period all works for which estimates are contained in the notice.

(ii) "Index figure" means an index figure in the "Public sector housing repair and maintenance cost index" in the "Housing and Construction Statistics" published from time to time by Her Majesty's Stationery Office, but does not include a provisional index figure.

Information for tenants

16G.—(1) The information which must be given to a tenant when he is asked to pay a relevant charge in respect of works itemised in the estimates is—

(a) a description of the works to which the relevant charge relates, together with an identification of the item in the estimates contained in the notice under section 125 (landlord's notice of purchase price etc.) to which the works relate,

(b) whether or not further costs will be incurred in respect of which item in the initial period; and, if not, the last date in the initial period on which costs were incurred in respect of the item (whether or not further costs will be incurred after the end of the initial period),

- (c) the amount of any payment made by a predecessor in title of the tenant in respect of such item, and
- (d) an explanation in simple terms of the provisions of paragraphs 16B to 16E, to the extent that they are relevant.

(2) In this paragraph "relevant charge" means a service charge or an improvement contribution to which the provisions of paragraph 16B or 16C are or may be relevant.

16H.—(1) The information which must be given to a tenant when he is asked to pay a relevant charge in respect of works not itemised in the estimates contained in the notice under section 125 (landlord's notice of purchase price etc.) is—

- (a) a description of the works or that part of the works to which the relevant charge relates,
- (b) the extent to which costs were incurred in respect of such works or part of the works in—
 - (i) any part of the initial period falling within the reference period, and
 - (ii) any part of the initial period not falling within the reference period,

- (c) the amount of any payment made by a predecessor in title of the tenant which is relevant in relation to such works, and
- (d) an explanation in simple terms of the provisions of paragraph 16B and paragraphs 16E and 16F, to the extent that they are relevant.

(2) In this paragraph "relevant charge" means a service charge or an improvement contribution to which the provisions of paragraph 16B or 16C are or may be relevant.

Avoidance of certain provisions

17.—(1) A provision of the lease, or of an agreement collateral to it, is void in so far as it purports to prohibit or restrict the assignment of the lease or the subletting, wholly or in part, of the dwelling-house.

(2) Sub-paragraph (1) has effect subject to section 157 (restriction on disposal of dwelling-houses in National Parks, etc.).

18. Where the dwelling-house is a flat, a provision of the lease or of an agreement collateral to it is void in so far as it purports—

- (a) to authorise the recovery of such a charge as is mentioned in paragraph 16A (contributions in respect of repairs, etc.) otherwise than in accordance with that paragraph and paragraph 16B (restrictions in initial period of lease); or
- (b) to authorise the recovery of any charge in respect of costs incurred by the landlord—
 - (i) in discharging the obligations imposed by the covenant implied by paragraph 14(3) (rebuilding or reinstatement, etc), or those obligations as modified in accordance with paragraph 14(4), or
 - (ii) in contributing to costs incurred by a superior landlord or other person in discharging obligations to the like effect; or
- (c) to authorise the recovery of an improvement contribution otherwise than in accordance with paragraph 16C (restrictions in initial period of lease).

19. A provision of the lease, or of an agreement collateral to it, is void in so far as it purports to authorise a forfeiture, or to impose on the tenant a penalty or disability, in the event of his enforcing or relying on the preceding provisions in this Schedule.

PART IV CHARGES

Grant of lease

20. A charge (however created or arising) on the interest of the landlord which is not a tenant's incumbrance does not affect a lease granted in pursuance of the right to buy.

Conveyance of freehold

21.—(1) This paragraph applies to a charge (however created or arising) on the freehold where the freehold is conveyed in pursuance of the right to buy.

(2) If the charge is not a tenant's incumbrance and is not a rentcharge the conveyance is effective to release the freehold from the charge; but the release does not affect the personal

liability of the landlord or any other person in respect of any obligation which the charge was created to secure.

(3) If the charge is a rentcharge the conveyance shall be made subject to the charge; but if the rentcharge also affects other land—

- (a) the conveyance shall contain a covenant by the landlord to indemnify the qualifying person and his successors in title in respect of any liability arising under the rentcharge, and
- (b) if the rentcharge is of a kind which may be redeemed under the Rentcharges Act 1977 1977 c.30. the landlord shall immediately after the conveyance take such steps as are necessary to redeem the rentcharge so far as it affects land owned by him.

(4) In this paragraph “rentcharge” has the same meaning as in the Rentcharges Act 1977; and—

- (a) for the purpose of sub-paragraph (3) land is owned by a person if he is the owner of it within the meaning of section 13(1) of that Act, and
- (b) for the purpose of that sub-paragraph and that Act land which has been conveyed by the landlord in pursuance of the right to buy but subject to the rentcharge shall be treated as if it had not been so conveyed but had continued to be owned by him.

SCHEDULE 7A

Section 142(1).

RECKONABLE AMOUNT OF QUALIFYING PERSON FOR PURPOSES OF RIGHT TO DEFER COMPLETION

Introductory

1. This Schedule has effect with respect to the calculation of a qualifying person’s reckonable amount for the purpose of ascertaining whether he is entitled to defer completion.

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 who is exercising the preserved right to buy.

Reckonable amount

3. The qualifying person’s reckonable amount for the purposes of section 142 (deferment of completion) is to be calculated by taking the amount which, in accordance with paragraphs 4 to 7, is his annual income and multiplying it by such factor as, under paragraph 10, is appropriate to the case.

Income from employment

4.—(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

5.—(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

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

(2) No account shall be taken of state benefits other than benefits under—

- 1965 c.51. (a) sections 36 and 37 of the National Insurance Act 1965 (graduated retirement benefits);
- 1975 c.14. (b) sections 27, 28, 29, 39 and 40 of the Social Security Act 1975 (retirement pensions); and
- 1975 c.60. (c) sections 6, 7 and 8 of the Social Security Pensions Act 1975 (state earnings related pensions).

(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.

- 1970 c.55. (4) In this paragraph "state benefits" means any benefits under the Family Income Supplements Act 1970, the Social Security Acts 1975 to 1985, the Child Benefit Act 1975 and the Supplementary Benefits Act 1976.
- 1975 c.61.
- 1976 c.71.

Income from more than one source

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

Estimates

8. The landlord may accept any estimate for the purposes of paragraphs 4 to 6.

Joint tenants

9. Where the right to buy is being exercised by more than one qualifying person, the preceding provisions of this Schedule shall be applied separately to determine the amount of each person's annual income.

Multipliers

10.—(1) This paragraph specifies the appropriate factor to be applied as a multiplier of the qualifying person's annual income to arrive at his reckonable amount.

(2) If the qualifying person's income is the principal income, the appropriate factor in relation to his 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

| <i>Qualifying person's age on the date of service of the notice</i> | <i>Multiplier</i> |
|---|-------------------|
| 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 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—

- (a) he is the only qualifying person with annual income, or
- (b) there is more than one qualifying person with annual income and the amount of his annual income is larger than that of the other qualifying person or, as the case may be, of any of the other qualifying persons, or

- (c) in a case to which paragraph (b) applies, the landlord agrees to treat the qualifying person's income as the principal income, despite the fact that the amount of the annual income of another qualifying person is larger than his.

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

SCHEDULE 9A

Section 171G.

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—
- states that the disposal is, so far as it relates to dwelling-houses occupied by secure tenants, a disposal to which section 171A applies (preservation of right to buy on disposal to private landlord), and
 - 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 (compulsory registration of title) applies—

1925 c.21.

- 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
- 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 for a term of which more than 21 years are unexpired.

(2) In such a case the disponent shall give the disponentee 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—

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

(4) The certificate shall be—

- in a form approved by the Chief Land Registrar, and
- signed by such officer of the disponent 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 disponentee'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 Part in relation to dwelling-houses comprised in the disposal, and
- a restriction stating the requirement of consent under section 171D(2) for certain subsequent disposals of the landlord's interest.

Change of qualifying dwelling-house

5.—(1) This paragraph applies where by virtue of section 171B(6) 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) a notice protecting the rights of the qualifying person or persons under the provisions of this Part, and
- (b) a restriction stating the requirement of consent under section 171D(2) for certain disposals of the landlord's interest.

1925 c.21. (3) A qualifying person may apply for the entry of such a notice and restriction 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.

1972 c.61. (4) If the landlord's title is not registered, the rights of the qualifying person or persons under the provisions of this Part are registrable under the Land Charges Act 1972 in the same way as an estate contract and the Landlord shall, and a qualifying person may, apply for such registration.

Effect of non-registration

6.—(1) The rights of a qualifying person under this Part 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 Part 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 this Part as they apply by virtue of section 171A (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 this Part, the conveyance or grant shall contain a statement to that effect.

(3) Where on a disposal of an interest in qualifying dwelling-house the dwelling-house ceases to be subject to the rights of a qualifying person under this Part by virtue of section 171D(1)(a) or 171E(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 the dwelling-house ceases as a result of the disposal to be subject to any rights arising by virtue of section 171A (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 Part.

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 Part),

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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify Part V (the right to buy) of the Housing Act 1985 in its application to a case where an authority which is the landlord of a dwelling-house occupied by a "secure tenant" for the purposes of Part IV of the Act disposes of the dwelling in circumstances under which the tenant's right to buy the dwelling is preserved by section 171A.

The modifications are, in the main, consequential changes of terminology, omission of irrelevant material and the inclusion of relevant material from current subordinate legislation.

There are three principal changes of substances—

- (a) there will not be a right to a mortgage (sections 132 to 135 of the Act);
- (b) there will not be a right to claim a shared ownership lease (sections 143 to 153 of the Act); and
- (c) the preserved right to buy will be exercisable against certain housing associations (broadly, charities and ones which have not received Government or local authority grants) which are excepted from the "mainstream" right to buy.

The Local Government Reorganisation (Preservation of Right to Buy) Order 1986 (S.I. 1986/2092) will continue to apply in relation to disposals of dwelling-houses by the bodies and authorities to which it applies which have taken place before these Regulations come into force. Future such disposals will fall within the terms of these Regulations.

£5.00 net

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