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## SCHEDULES

### SCHEDULE 11

Section 79(13).

#### PROVISIONS APPLICABLE TO CERTAIN DISPOSALS OF HOUSES

##### *Repayment of discount on early disposal*

- 1 (1) This paragraph applies where, on the disposal of a house under section 79 of this Act, a discount is given to the purchaser by the housing action trust in accordance with a consent given by the Secretary of State under subsection (1) of that section and that consent does not exclude the application of this paragraph.
- (2) On the disposal, the conveyance, grant or assignment shall contain a covenant binding on the purchaser and his successors in title to pay to the housing action trust 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), an amount equal to the discount, reduced by one-third for each complete year which has elapsed after the conveyance, grant or assignment and before the further disposal.

VALID FROM 18/01/2005

*[<sup>F1</sup>Increase in value of house attributable to home improvements*

#### **Textual Amendments**

**F1** Sch. 11 para. 1A and cross-heading inserted (18.1.2005) by Housing Act (c. 34), {ss. 203}, 270 (with s. 203(4))

- 1A (1) In calculating the maximum amount which may be demanded by the housing action trust under paragraph 1, such amount (if any) of the price or premium paid for the first relevant disposal which is attributable to improvements made to the house—
- (a) by the person by whom the disposal is, or is to be, made, and
  - (b) after the conveyance, grant or assignment and before the disposal,
- shall be disregarded.
- (2) The amount to be disregarded under this paragraph shall be such amount as may be agreed between the parties or determined by the district valuer.
- (3) The district valuer shall not be required by virtue of this paragraph to make a determination for the purposes of this paragraph unless—
- (a) it is reasonably practicable for him to do so; and

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- (b) his reasonable costs in making the determination are paid by the person by whom the disposal is, or is to be, made.
- (4) If the district valuer does not make a determination for the purposes of this paragraph (and in default of an agreement), no amount is required to be disregarded under this paragraph.]

*Obligation to repay a charge on the house*

- 2 (1) The liability that may arise under the covenant required by paragraph 1 above is a charge on the 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) left outstanding by the purchaser; or
  - (b) advanced to him by an approved lending institution for the purpose of enabling him to acquire the interest disposed of on the first disposal; or
  - (c) further advanced to him by that institution;
- but the housing action trust may at any time by written notice served on an approved lending institution postpone the charge taking effect by virtue of this paragraph to a legal charge securing an amount advanced or further advanced to the purchaser by that institution.
- (3) A charge taking effect by virtue of this paragraph is a land charge for the purposes of section 59 of the <sup>M1</sup>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.
- (4) The covenant required by paragraph 1 above does not, by virtue of its binding successors in title of the purchaser, bind a person exercising rights under a charge having priority over the charge taking effect by virtue of this paragraph, or a person deriving title under him; and a provision of the conveyance, grant or assignment, 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 the covenant.
- (5) The approved lending institutions for the purposes of this paragraph are—
- (a) a building society;
  - (b) a bank;
  - (c) an insurance company;
  - (d) a friendly society; and
  - (e) any body specified, or of a class or description specified, in an order made under section 156 of the <sup>M2</sup>Housing Act 1985 (which makes provision in relation to disposals in pursuance of the right to buy corresponding to that made by this paragraph).

**Marginal Citations**

**M1** 1925 c. 21.

**M2** 1985 c. 68.

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VALID FROM 18/01/2005

## *F<sup>2</sup> Right of first refusal for housing action trust*

### **Textual Amendments**

**F2** Sch. 11 paras. 2A, 2B and cross-headings inserted (18.1.2005) by [Housing Act 2004 \(c. 34\)](#), ss. 204, 270 (with s. 204(3))

- 2A (1) This paragraph applies where, on the disposal of a house under section 79 of this Act, a discount is given to the purchaser by the housing action trust in accordance with a consent given by the Secretary of State under subsection (1) of that section and that consent does not exclude the application of this paragraph.
- (2) On the disposal, the conveyance, grant or assignment shall contain the following covenant, which shall be binding on the purchaser and his successors in title.
- (3) The covenant shall be to the effect that, until the end of the period of ten years beginning with the conveyance, grant or assignment, there will be no relevant disposal which is not an exempted disposal, unless the prescribed conditions have been satisfied in relation to that or a previous such disposal.
- (4) In sub-paragraph (3) “the prescribed conditions” means such conditions as are prescribed by regulations under this section at the time when the conveyance, grant or assignment is made.
- (5) The Secretary of State may by regulations prescribe such conditions as he considers appropriate for and in connection with conferring on—
- (a) a housing action trust which has made a disposal as mentioned in sub-paragraph (1), or
  - (b) such other person as is determined in accordance with the regulations,
- a right of first refusal to have a disposal within sub-paragraph (6) made to him for such consideration as is mentioned in paragraph 2B.
- (6) The disposals within this sub-paragraph are—
- (a) a reconveyance or conveyance of the house; and
  - (b) a surrender or assignment of the lease.
- (7) Regulations under this paragraph may, in particular, make provision—
- (a) for the purchaser to offer to make such a disposal to such person or persons as may be prescribed;
  - (b) for a prescribed recipient of such an offer to be able either to accept the offer or to nominate some other person as the person by whom the offer may be accepted;
  - (c) for the person who may be so nominated to be either a person of a prescribed description or a person whom the prescribed recipient considers, having regard to any prescribed matters, to be a more appropriate person to accept the offer;
  - (d) for a prescribed recipient making such a nomination to give a notification of the nomination to the person nominated, the purchaser and any other prescribed person;

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- (e) for authorising a nominated person to accept the offer and for determining which acceptance is to be effective where the offer is accepted by more than one person;
  - (f) for the period within which the offer may be accepted or within which any other prescribed step is to be, or may be, taken;
  - (g) for the circumstances in which the right of first refusal lapses (whether following the service of a notice to complete or otherwise) with the result that the purchaser is able to make a disposal on the open market;
  - (h) for the manner in which any offer, acceptance or notification is to be communicated.
- (8) In sub-paragraph (7) any reference to the purchaser is a reference to the purchaser or his successor in title.
- Nothing in that sub-paragraph affects the generality of sub-paragraph (5).
- (9) Regulations under this paragraph—
- (a) may make different provision with respect to different cases or descriptions of case; and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The limitation imposed by a covenant within sub-paragraph (3) is a local land charge.
- (11) The Chief Land Registrar must enter in the register of title a restriction reflecting the limitation imposed by any such covenant.

VALID FROM 18/01/2005

*Consideration payable for disposal under paragraph 2A*

- 2B (1) The consideration for a disposal made in respect of a right of first refusal as mentioned in paragraph 2A(5) shall be such amount as may be agreed between the parties, or determined by the district valuer, as being the amount which is to be taken to be the value of the house at the time when the offer is made (as determined in accordance with regulations under that paragraph).
- (2) That value shall be taken to be the price which, at that time, the interest to be reconveyed, conveyed, surrendered or assigned would realise if sold on the open market by a willing vendor, on the assumption that any liability under the covenant required by paragraph 1 (repayment of discount on early disposal) would be discharged by the vendor.
- (3) If the offer is accepted in accordance with regulations under paragraph 2A, no payment shall be required in pursuance of any such covenant as is mentioned in sub-paragraph (2), but the consideration shall be reduced, subject to sub-paragraph (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 house having priority over the charge to secure payment of the sum due under the covenant mentioned in sub-paragraph (2), the

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consideration shall not be reduced under sub-paragraph (3) below the amount necessary to discharge the outstanding sum secured by the first-mentioned charge at the date of the offer (as determined in accordance with regulations under paragraph 2A).]

#### *Relevant disposals*

- 3 (1) A disposal, whether of the whole or part of the house, is a relevant disposal for the purpose of this Schedule if it is—
- (a) a conveyance of the freehold or an assignment of the lease; or
  - (b) the grant of a lease or sub-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 sub-paragraph (1)(b) above 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*

- 4 (1) A disposal is an exempted disposal for the purposes of this Schedule if—
- (a) it is a disposal of the whole of the house and a 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 sub-paragraph (2) below);
  - (b) it is a vesting of the whole of the house in a person taking under a will or on an intestacy;
  - [<sup>F3</sup>(c) it is a disposal of the whole of the house in pursuance of an such order as is mentioned in sub-paragraph (4) below;]
  - (d) it is a compulsory disposal; or
  - (e) the property disposed of is property included with the house as being such a yard, garden, outhouse or appurtenance as is referred to in section 92(1)(b) of this Act.
- (2) For the purposes of sub-paragraph (1)(a) above, 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.
- (3) Section 186 of the <sup>M3</sup>Housing Act 1985 applies to determine whether a person is a member of another person's family for the purposes of sub-paragraph (2)(c) above.
- [<sup>F4</sup>(4) The orders referred to in sub-paragraph (1)(c) above are orders under—
- (a) section 24 or 24A of the Matrimonial Causes Act 1973 (property adjustment orders or orders for the sale of property in connection with matrimonial proceedings),
  - (b) section 2 of the Inheritance (Provision for Family and Dependents) Act 1975 (orders as to financial provision to be made from estate),

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- (c) section 17 of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders or orders for the sale of property after overseas divorce, &c.), or
- (d) paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents).]

#### Textual Amendments

- F3** Sch. 11 para. 4(1)(c) substituted (1.10.1996) by 1996 c. 52, s. 222, **Sch. 18 Pt. III para. 19(2)**; S.I. 1996/2402, **art. 3** (subject to transitional provisions in Sch.)
- F4** Sch 11 para. 4(4) added (1.10.1996) by 1996 c. 52, s. 222, **Sch. 18 Pt. III para. 19(3)**; S.I. 1996/2402, **art. 3** (subject to transitional provisions in Sch.)

#### Marginal Citations

- M3** 1985 c. 68.

#### *Compulsory disposal*

- 5 In this Schedule 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 ending obligation under covenants*

- 6 Where there is a relevant disposal which is an exempted disposal by virtue of paragraph 4(1)(d) or paragraph 4(1)(e) above—
- (a) the covenant required by paragraph 1 above is not binding on the person to whom the disposal is made or any successor in title of his; and
  - (b) that covenant and the charge taking effect by virtue of paragraph 2 above cease to apply in relation to the property disposed of.

#### *Treatment of options*

- 7 For the purpose of this Schedule, 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.

VALID FROM 18/11/2004

#### *[<sup>F5</sup>Treatment of deferred resale agreements*

#### Textual Amendments

- F5** Sch. 11 para. 8 and cross-heading inserted (18.11.2004 for certain purposes and otherwise 18.1.2005) by Housing 2004 (c. 34), {ss. 205(1)}, 270 (with 205(2))

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- 8
- (1) If a purchaser or his successor in title enters into an agreement within sub-paragraph (3), any liability arising under the covenant required by paragraph 1 shall be determined as if a relevant disposal which is not an exempted disposal had occurred at the appropriate time.
  - (2) In sub-paragraph (1) “the appropriate time” means—
    - (a) the time when the agreement is entered into, or
    - (b) if it was made before the beginning of the discount repayment period, immediately after the beginning of that period.
  - (3) An agreement is within this sub-paragraph if it is an agreement between the purchaser or his successor in title and any other person—
    - (a) which is made (expressly or impliedly) in contemplation of, or in connection with, a disposal to be made, or made, under section 79,
    - (b) which is made before the end of the discount repayment period, and
    - (c) under which a relevant disposal (other than an exempted disposal) is or may be required to be made to any person after the end of that period.
  - (4) Such an agreement is within sub-paragraph (3)—
    - (a) whether or not the date on which the relevant disposal is to take place is specified in the agreement, and
    - (b) whether or not any requirement to make that disposal is or may be made subject to the fulfilment of any condition.
  - (5) The Secretary of State may by order provide—
    - (a) for sub-paragraph (1) to apply to agreements of any description specified in the order in addition to those within sub-paragraph (3);
    - (b) for sub-paragraph (1) not to apply to agreements of any description so specified to which it would otherwise apply.
  - (6) An order under sub-paragraph (5)—
    - (a) may make different provision with respect to different cases or descriptions of case; and
    - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (7) In this paragraph—

“agreement” includes arrangement;

“the discount repayment period” means the period of 3 years that applies for the purposes of paragraph 1(2) or the period of five years that applies for the purposes of paragraph 1(3)(depending on whether an offer such as is mentioned in section 203(4) of the Housing Act 2004 was made before or on or after the coming into force of that section).]

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