

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.

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 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

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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 Housing Act 1985 (which makes provision in relation to disposals in pursuance of the right to buy corresponding to that made by this paragraph).

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;
 - (c) it is a disposal of the whole of the 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 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 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.

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.