



Housing Act 2004

2004 CHAPTER 34

PART 6

OTHER PROVISIONS ABOUT HOUSING

CHAPTER 2

DISPOSALS ATTRACTING DISCOUNTS OTHER THAN UNDER RIGHT TO BUY

Disposals by local authorities

195 Repayment of discount: periods and amounts applicable

- (1) Section 35 of the Housing Act 1985 (repayment of discount on early disposal) is amended in accordance with subsections (2) and (3).
- (2) In subsection (2) for the words from “to pay to the authority” to the end of the subsection substitute “to the following effect.”
- (3) After subsection (2) insert—
 - “(3) The covenant shall be to pay to the authority such sum (if any) as the authority may demand in accordance with subsection (4) on the occasion of the first relevant disposal (other than an exempted disposal) which takes place within the period of five years beginning with the conveyance, grant or assignment.
 - (4) The authority may demand such sum as they consider appropriate, up to and including the maximum amount specified in this section.
 - (5) The maximum amount which may be demanded by the authority is a percentage of the price or premium paid for the first relevant disposal which is equal to the percentage discount given to the purchaser in respect of the disposal of the house under section 32.

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- (6) But for each complete year which has elapsed after the conveyance, grant or assignment and before the first relevant disposal the maximum amount which may be demanded by the landlord is reduced by one-fifth.
- (7) Subsections (4) to (6) are subject to section 35A.”
- (4) The amendments made by this section do not apply in any case where—
 - (a) the purchaser has accepted an offer for the disposal of the house from the authority, or
 - (b) the authority has accepted an offer for the disposal of the house from the purchaser,
 before the day on which this section comes into force.
- (5) Subsection (6), however, applies in any such case if the first relevant disposal by the purchaser to which the covenant for repayment of discount applies takes place on or after the day on which this section comes into force.
- (6) In the following provisions—
 - (a) section 35(2) of the Housing Act 1985 (c. 68) (as it has effect without the amendments made by this section), and
 - (b) any covenant for repayment of discount,
 any reference (however expressed) to a person being liable to pay an amount to the authority on demand is to be read as a reference to his being liable to pay to the authority so much of that amount (if any) as the authority may demand.
- (7) In subsections (5) and (6) “covenant for repayment of discount” means the covenant contained in a conveyance, grant or assignment in accordance with section 35 of that Act.

196 Repayment of discount: increase attributable to home improvements to be disregarded

After section 35 of the Housing Act 1985 insert—

“35A Increase in value of house attributable to home improvements

- (1) In calculating the maximum amount which may be demanded by the authority under section 35, 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 section 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 section to make a determination for the purposes of this section unless—
 - (a) it is reasonably practicable for him to do so; and
 - (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 section (and in default of an agreement), no amount is required to be disregarded under this section.”

197 Local authority’s right of first refusal

- (1) After section 36 of the Housing Act 1985 (c. 68) insert—

“36A Right of first refusal for local authority

- (1) This section applies where, on a disposal of a house under section 32, a discount is given to the purchaser by the local authority in accordance with a consent given by the Secretary of State under subsection (2) of that section; but this section does not apply in any such case if the consent so provides.
- (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 subsection (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 local authority which have made a disposal as mentioned in subsection (1), or
 - (b) such other person as is determined in accordance with the regulations, a right of first refusal to have a disposal within subsection (6) made to them or him for such consideration as is mentioned in section 36B.
- (6) The disposals within this subsection are—
- (a) a reconveyance or conveyance of the house; and
 - (b) a surrender or assignment of the lease.
- (7) Regulations under this section 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;

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- (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;
 - (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 subsection (7) any reference to the purchaser is a reference to the purchaser or his successor in title.
- Nothing in that subsection affects the generality of subsection (5).
- (9) Regulations under this section—
- (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 subsection (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.

36B Consideration payable for disposal under section 36A

- (1) The consideration for a disposal made in respect of a right of first refusal as mentioned in section 36A(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 section).
- (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 section 35 (repayment of discount on early disposal) would be discharged by the vendor.
- (3) If the offer is accepted in accordance with regulations under section 36A, 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 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 (as determined in accordance with regulations under section 36A).”

- (2) In section 33(2) of the Housing Act 1985 (c. 68) (covenants and conditions which may be imposed), after “But” insert “, subject to sections 36A and 37.”.
- (3) In section 37(1) of that Act (restriction on disposal of dwelling-houses in National Parks etc.), after “restriction on assignment” insert “or a covenant as mentioned in section 36A(3) (right of first refusal for local authority)”.
- (4) In section 41 of that Act (exempted disposals which end liability under covenants), after paragraph (a) insert—
 - “(aa) the covenant required by section 36A (right of first refusal for local authority) is not binding on the person to whom the disposal is made or any successor in title of his, and that covenant ceases to apply in relation to the property disposed of, and”.
- (5) The amendments made by this section do not apply in relation to a disposal under section 32 of that Act if—
 - (a) the purchaser has accepted an offer for the disposal of the house from the authority, or
 - (b) the authority has accepted an offer for the disposal of the house from the purchaser,
 before the day on which this section comes into force.

198 Deferred resale agreements

- (1) After section 39 of the Housing Act 1985 insert—

“39A Treatment of deferred resale agreements for purposes of section 35

- (1) If a purchaser or his successor in title enters into an agreement within subsection (3), any liability arising under the covenant required by section 35 shall be determined as if a relevant disposal which is not an exempted disposal had occurred at the appropriate time.
- (2) In subsection (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 subsection 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 32,
 - (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 subsection (3)—

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- (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 subsection (1) to apply to agreements of any description specified in the order in addition to those within subsection (3);
 - (b) for subsection (1) not to apply to agreements of any description so specified to which it would otherwise apply.
- (6) An order under subsection (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 section—
 - “agreement” includes arrangement;
 - “the discount repayment period” means the period of 3 years that applies for the purposes of section 35(2) or the period of five years that applies for the purposes of section 35(3) (depending on whether an offer such as is mentioned in section 195(4) of the Housing Act 2004 was made before or on or after the coming into force of that section).”
- (2) The amendment made by this section does not apply in relation to any agreement or arrangement made before the day on which this section comes into force.