



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART III

#### RIGHTS OF PUBLIC SECTOR TENANTS

##### *Procedure*

#### **63 Application to purchase and offer to sell.**

- (1) A tenant who seeks to exercise a right to purchase a house purchase and offer under section 61 shall serve on the landlord a notice (referred to in this to sell. Part as an "application to purchase") which shall be in such form as the Secretary of State shall by order made by statutory instrument prescribe, and shall contain—
- (a) notice that the tenant seeks to exercise the right to purchase;
  - (b) a statement of any period of occupancy of a house on which the tenant intends to rely for the purposes of section 61 and 62; and
  - (c) the name of any joint purchaser within the meaning of section 61(6) <sup>[F1]</sup>; and
  - (d) in the case of a tenant who is entitled to purchase the house by way of the rent to loan scheme, a statement whether he wishes to proceed so to purchase the house.]
- (2) Where an application to purchase is served on a landlord, and the landlord does not serve a notice of refusal under sections 68 to 70 it shall, within 2 months after service of the application to purchase, serve on the tenant a notice (referred to in this Part as an "offer to sell") containing—
- (a) the market value of the house determined under section 62(2);
  - (b) the discount calculated under section 62(3);
  - (c) the price fixed under section 62(1);
  - <sup>[F2]</sup>(cc) where the application to purchase contains a statement under subsection (1)(d) that the applicant wishes to proceed by way of the rent to loan scheme and the statement has not been withdrawn, the minimum amount of the initial capital payment, a statement that the applicant, if so minded, may make an initial

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capital payment greater than the minimum and a description of the deferred financial commitment including—

- (i) the amount of the deferred financial commitment calculated as if due to be paid as at the date of the offer to sell;
- (ii) an explanation of why and how the amount of the deferred financial commitment when payable under section 73C(3)(a) can vary from its amount as calculated under sub-paragraph (i); and
- (iii) the procedure for paying the deferred financial commitment.]
- (d) any conditions which the landlord intends to impose under section 64; and
- (e) an offer to sell the house to the tenant and any joint purchaser named in the application to purchase at the price referred to in paragraph (c) and under the conditions referred to in paragraph (d).

[<sup>F3</sup>(3) Where, in response to an offer to sell containing the matters referred to in paragraph (cc) of subsection (2), an applicant has informed a landlord in writing of his intention to make an initial capital payment of an amount greater than the minimum, the landlord shall, before the end of the period specified in subsection (2) or, if later, the expiry of one month from the date when the landlord was so informed of the tenant's intention, serve an amended offer to sell in which the calculation of the deferred financial commitment is revised accordingly.]

#### Textual Amendments

- F1 S. 63(1)(d) and preceding word inserted (27.9.1993) by 1993 c. 28, s. 143(2)(a); S.I. 1993/2163, art. 2, Sch. 1.
- F2 S. 63(2)(cc) inserted (27.9.1993) by 1993 c. 28, S. 143(2)(b); S.I. 1993/2163, art. 2, Sch. 1.
- F3 S. 63(3) inserted (27.9.1993) by 1993 c. 28, s. 143(2)(c); S.I. 1993/2163, art. 2, Sch. 1.

#### Modifications etc. (not altering text)

- C1 S. 63 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

64

- (1) Subject to section 75, an offer to sell under section 63(2) shall contain such conditions as are reasonable, provided that—
  - (a) the conditions shall have the effect of ensuring that the tenant has as full enjoyment and use of the house as owner as he has had as tenant;
  - (b) the conditions shall secure to the tenant such additional rights as are necessary for his reasonable enjoyment and use of the house as owner (including, without prejudice to the foregoing generality, common rights in any part of the building of which the house forms part) and shall impose on the tenant any necessary duties relative to rights so secured; and
  - (c) the conditions shall include such terms as are necessary to entitle the tenant to receive a good and marketable title to the house.
- (2) A condition which imposes a new charge or an increase of an existing charge for the provision of a service in relation to the house shall provide for the charge to be in reasonable proportion to the cost to the landlord of providing the service.
- (3) No condition shall be imposed under this section which has the effect of requiring the tenant to pay any expenses of the landlord.

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- (4) Subject to subsection (6), no condition shall be imposed under this section which has the effect of requiring the tenant or any of his successors in title to offer to the landlord, or to any other person, an option to purchase the house in advance of its sale to a third party, except in the case of a house which has facilities which are substantially different from those of an ordinary house and which has been designed or adapted for occupation by a person of pensionable age or disabled person whose special needs require accommodation of the kind provided by the house.
- (5) Where an option to purchase permitted under subsection (4) is exercised, the price to be paid for the house shall be determined by the district valuer who shall have regard to the market value of the house at the time of the purchase and to any amount due to the landlord under section 72 (recovery of discount on early re-sale).
- (6) Subsection (4) shall not apply to houses in an area which is designated a rural area by the <sup>[F4]</sup>local authority within whose area it is situated where the Secretary of State, on the application of the <sup>[F4]</sup>local authority concerned, makes an order, which shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, to that effect.
- (7) An order under subsection (6) may be made where—
- (a) within the said rural area more than one-third of all relevant houses have been sold <sup>[F5]</sup>whether under this Part or otherwise]; and
  - <sup>[F6]</sup>(b) the Secretary of State is satisfied that an unreasonable proportion of the houses sold consists of houses which have been resold and are not—
    - (i) being used as the only or principal homes of the owners; or
    - (ii) subject to regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act <sup>M1</sup>1984 or assured tenancies for the purposes of Part II of the Housing (Scotland) Act 1988.]
- (8) For the purposes of subsection (7)(a), a “relevant house” is one of which—
- (a) at 3rd October 1980, the council concerned, or
  - (b) at 7th January 1987, a registered housing association, is landlord.
- (9) A condition imposed by virtue of subsection (6) shall not have effect in relation to any house for more than 10 years from the date of its conveyance to a tenant in pursuance of his right to purchase under this Part and subsection (5) shall apply to any option to purchase exercised under such a condition.

#### Textual Amendments

- F4** Words in s. 64(6) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 152(3)**; S.I. 1996/323, **art. 4**
- F5** Words inserted by Housing (Scotland) Act 1988 (c. 43, SIF 61), s. 72(2), **Sch. 9 para. 11(a)**
- F6** S. 64(7)(b) substituted by Housing (Scotland) Act 1988 (c. 43, SIF 61), s. 72(2), **Sch. 9 para. 11(b)**

#### Modifications etc. (not altering text)

- C2** S. 64 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, **Sch. 1**

#### Marginal Citations

- M1** 1984 c.58.

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## 65 Variation of conditions.

- (1) Where an offer to sell is served on a tenant and he wishes to exercise his right to purchase, but—
- (a) he considers that a condition contained in the offer to sell is unreasonable; or
  - (b) he wishes to have a new condition included in it; or
  - (c) he has not previously notified the landlord of his intention to exercise that right together with a joint purchaser, but now wishes to do so; or
  - (d) he has previously notified the landlord of his intention to exercise that right together with any joint purchaser but now wishes to exercise the right without that joint purchaser,

he may request the landlord to strike out or vary the condition, or to include the new condition, or to make the offer to sell to the tenant and the joint purchaser, or to withdraw the offer to sell in respect of the joint purchaser, as the case may be, by serving on the landlord within one month after service of the offer to sell a notice in writing setting out his request; and if the landlord agrees, it shall accordingly serve an amended offer to sell on the tenant within one month of service of the notice setting out the request.

- (2) A tenant who is aggrieved by the refusal of the landlord to agree to strike out or vary a condition, or to include a new condition, or to make the offer to sell to the tenant and the joint purchaser, or to withdraw the offer to sell in respect of any joint purchaser under subsection (1), or by his failure timeously to serve an amended offer to sell under the said subsection, may, within one month or, with the consent of the landlord given in writing before the expiry of the said period of one month, within two months of the refusal or failure, refer the matter to the Lands Tribunal for determination.
- (3) In proceedings under subsection (2), the Lands Tribunal may, as it thinks fit, uphold the condition or strike it out or vary it, or insert the new condition or order that the offer to sell be made to the tenant and the joint purchaser, or order that the offer to sell be withdrawn in respect of any joint purchaser, and where its determination results in a variation of the terms of the offer to sell, it shall order the landlord to serve on the tenant an amended offer to sell accordingly within 2 months thereafter.

### Modifications etc. (not altering text)

C3 S. 65 modified (13.3.1992) by S.I. 1992/325, regs.3, 5, 7, Sch. 1

## 66 Notice of acceptance.

- (1) Where an offer to sell is served on a tenant and he wishes to exercise his right to purchase and—
- (a) he does not dispute the terms of the offer to sell by timeously serving a notice setting out a request under section 65(1) or by referring the matter to the Lands Tribunal under subsection (1)(d) of section 71; or
  - (b) any such dispute has been resolved;
- the tenant shall, subject to section 67(1), serve a notice of acceptance on the landlord within 2 months of whichever is the latest of—
- (i) the service on him of the offer to sell;
  - (ii) the service on him of an amended offer to sell (or if there is more than one, of the latest amended offer to sell);

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- (iii) a determination by the Lands Tribunal under section 65(3) which does not require service of an amended offer to sell;
  - (iv) a finding or determination of the Lands Tribunal in a matter referred to it under section 71(1)(d) where no order is made under section 71(2)(b);
  - (v) the service of an offer to sell on him by virtue of subsection (2)(b) of section 71;
  - (vi) where a loan application under subsection (2)(a)(i) of section 216 (loans) has been served on the landlord, the service of a relative offer or refusal of loan; or
  - (vii) where section 216(7) (loans) is invoked, the decision of the court.
- (2) Where an offer to sell (or an amended offer to sell) has been served on the tenant and a relative notice of acceptance has been duly served on the landlord, a contract of sale of the house shall be constituted between the landlord and the tenant on the terms contained in the offer (or amended offer) to sell.

**Modifications etc. (not altering text)**

C4 S. 66 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

**[<sup>F7</sup>66A Abatement of purchase price on landlord's failure before contract of sale.**

- (1) Where a tenant who seeks to exercise a right to purchase a house under section 61 has served an application to purchase on the landlord and the landlord—
- (a) not having served a notice of refusal, has failed to serve an offer to sell on the tenant within 2 months of the application or, where an amended offer to sell falls to be served on the tenant under subsection (3) of section 63, has failed to do so within the time limit specified in that subsection;
  - (b) having agreed to serve an amended offer to sell on the tenant in response to a request under section 65(1), has failed to do so within one month of the request;
  - (c) following an order by the Lands Tribunal to serve an amended offer to sell on the tenant under section 65(3), has failed to do so within 2 months of the date of the order;
  - (d) following a finding by the Lands Tribunal under section 68(4), has failed to serve an offer to sell within 2 months of the date of the finding; or
  - (e) following an order by the Lands Tribunal under section 71(2)(b), has failed to serve an offer or amended offer to sell within the time specified in the order,
- the tenant may serve on the landlord a notice in writing requiring the landlord to serve on him, within one month of the date of the notice, the offer to sell or (as the case may be) the amended offer to sell which the landlord has failed to serve.
- (2) Where the landlord fails to serve the offer to sell or the amended offer to sell within one month of the date of the notice in writing under subsection (1), the price fixed under section 62 shall be reduced by the amount of rent paid by the tenant during the period commencing with the date on which the one month period expired and ending with the date on which the offer is served.]

**Textual Amendments**

F7 Ss. 66A-66C inserted (27.9.1993) by 1993 c. 28, s. 144; S.I. 1993/2163, art. 2, Sch. 1.

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**66B** <sup>F8</sup> **Abatement of purchase price on landlord's failure after contract of sale.**

- (1) Where the landlord has failed and continues to fail to deliver a good and marketable title to the tenant in accordance with the contract of sale, the tenant may at any time serve on the landlord a notice (the "initial notice of delay") setting out the landlord's failure and specifying—
  - (a) the most recent action of which the tenant is aware which has been taken by the landlord in fulfilment of his duties under this Part;
  - (b) a period (the "response period"), of not 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 (2) will have the effect of cancelling the initial notice of delay.
- (2) If 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 grant a good and marketable title to the tenant in implementation of the contract of sale, the landlord may serve on the tenant a counter notice either during or after the response period.
- (3) At any time when—
  - (a) the response period specified in the initial notice of delay has expired; and
  - (b) the landlord has not served a counter notice under subsection (2),
 the tenant may serve on the landlord a notice (the "operative notice of delay") that this subsection shall apply to the price fixed under section 62; and thereupon the price fixed under section 62 shall be reduced by the amount of rent paid by the tenant during the period commencing with the date of service of the operative notice of delay and ending with whichever is the earlier of the following dates—
  - (i) the date of service by the landlord of a counter notice; or
  - (ii) the date of delivery by the landlord of a good and marketable title in implementation of the contract of sale.
- (4) Where the landlord has served a counter notice under subsection (2) the tenant (together with any joint purchaser) may, by serving on the clerk to the Lands Tribunal a copy of the initial notice of delay and of the landlord's counter notice together with a request for the matter to be so referred, refer the matter to the Tribunal for its consideration under subsection (5).
- (5) Where the matter has been so referred to the Lands Tribunal it shall consider whether or not in its opinion action which would have enabled a good and marketable title to be delivered in implementation of the contract of sale could have been taken by the landlord and shall find accordingly.
- (6) Where the Lands Tribunal finds that action could have been taken by the landlord the tenant shall be entitled to serve an operative notice of delay as if the landlord had not served a counter notice and in that event the commencement date for the purposes of subsection (3) shall be the date on which an operative notice of delay could first have been served if no counter notice had been served.

**Textual Amendments**

**F8** Ss. 66A-66C inserted (27.9.1993) by 1993 c. 28, s. 144; S.I. 1993/2163, art. 2, Sch. 1.

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## 66C <sup>F9</sup>Provisions relating to sections 66A and 66B.

- (1) Where there is more than one period in respect of which the price fixed under section 62 can be reduced under section 66A(2) or 66B(3), the periods may be aggregated and the price reduced by the total amount of the rent.
- (2) If the period in respect of which the price fixed can be so reduced is, or if the periods aggregated under subsection (1) together amount to, more than twelve months, the amount by which the price fixed under section 62 would, apart from this subsection, fall to be reduced shall be increased by 50% or such other percentage as the Secretary of State may by order made by statutory instrument and subject to annulment in pursuance of a resolution of either House of Parliament provide.

### Textual Amendments

**F9** Ss. 66A-66C inserted (27.9.1993) by 1993 c. 28, s. 144; S.I. 1993/2163, art. 2, Sch. 1.

## 67 Fixed price option.

- (1) Where an offer to sell (or an amended offer to sell) is served on a tenant, but he is unable by reason of the application of regulations made under section 216(3) (loans) to obtain a loan of the amount for which he has applied, he may, within 2 months of service on him of an offer of loan, or (as the case may be) of the date of a declarator by the sheriff under section 216(7) (loans), whichever is the later, serve on the landlord a notice to the effect that he wishes to have a fixed price option, which notice shall be accompanied by a payment to the landlord of £100, and in that event he shall be entitled to serve a notice of acceptance on the landlord at any time within 2 years of the service of the application to purchase:

Provided that where, as regards the house, the tenant has served a loan application in accordance with subsection (2)(a)(ii) of section 216 (loans), he shall be entitled (even if the said period of 2 years has expired) to serve a notice of acceptance on the landlord within 2 months of whichever is the later of—

- (a) the service of a relative offer, or refusal, of loan; or
  - (b) where section 216(7) is invoked, the decision of the court.
- (2) The payment of £100 mentioned in subsection (1) shall be recoverable—
    - (a) by the tenant, when he purchases the house in accordance with that subsection or, if he does not, at the expiry of the period of 2 years mentioned therein;
    - (b) by the tenant, when the landlord recovers possession of the house under subsection (3); or
    - (c) by his personal representatives, if he dies without purchasing the house in accordance with that subsection.
  - (3) The existence of a fixed price option under subsection (1) shall not prevent the landlord from recovering possession of the property in any manner which may be lawful, and in that event the option shall be terminated.
  - [<sup>F10</sup>(4) This section does not apply where the tenant is exercising his right to purchase under section 61 by way of the rent to loan scheme.]

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#### Textual Amendments

**F10** S. 67(4) inserted (27.9.1993) by 1993 c. 28, s. 143(3); S.I. 1993/2163, art. 2, Sch. 1.

#### Modifications etc. (not altering text)

**C5** S. 67 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1

### 68 Refusal of applications.

- (1) Where a landlord on which an application to purchase has been served disputes the tenant's right to purchase a house under section 61, it shall by notice (referred to in this Part as a "notice of refusal") served within one month after service of the application to purchase—
  - (a) refuse the application; or
  - (b) offer to sell the house to the tenant under section 14, or under any other power which the landlord has to sell the house.
- (2) Where a landlord on which an application to purchase has been served, after reasonable enquiry (which shall include reasonable opportunity for the tenant to amend his application), is of the opinion that information contained in the application is incorrect in a material respect it shall issue a notice of refusal within 2 months of the application to purchase.
- (3) A notice of refusal shall specify the grounds on which the landlord disputes the tenant's right to purchase or, as the case may be, the accuracy of the information.
- (4) Where a landlord serves a notice of refusal on a tenant under this section, the tenant may within one month thereafter apply to the Lands Tribunal for a finding that he has a right to purchase the house under section 61 on such terms as it may determine.

#### Modifications etc. (not altering text)

**C6** S. 68 modified (13.3.1992) by S.I. 1992/325, regs. 3, 5, 7, Sch. 1



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