



Housing (Scotland) Act 1987

1987 CHAPTER 26

PART III

RIGHTS OF PUBLIC SECTOR TENANTS

Right to buy

61 Secure tenant's right to purchase

- (1) Notwithstanding anything contained in any agreement, a tenant of a house to which this section applies (or such one or more of joint tenants as may be agreed between them) shall, subject to this Part, have the right to purchase the house at a price fixed under section 62.
- (2) This section applies to every house let under a secure tenancy where—
 - (a) the landlord is either—
 - (i) an islands or district council, or a joint board or joint committee of an islands or district council or the common good of an islands or district council, or any trust under the control of an islands or district council; or
 - (ii) a regional council, or a joint board or joint committee of 2 or more regional councils, or any trust under the control of a regional council; or
 - (iii) a development corporation (including an urban development corporation); or
 - (iv) the Scottish Special Housing Association; or
 - (v) the Housing Corporation; or
 - (vi) a registered housing association; or
 - (vii) a housing co-operative; or
 - (viii) a police authority in Scotland; or
 - (ix) a fire authority in Scotland; and

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- (b) the landlord is the heritable proprietor of the house or, in the case of a landlord who is a housing co-operative, a body mentioned in paragraph (a)(i) is the heritable proprietor; and
 - (c) immediately prior to the date of service of an application to purchase, the tenant has been for not less than 2 years in occupation of a house (including accommodation provided as mentioned in subsection (11)(n)) or of a succession of houses provided by any persons mentioned in subsection (11).
- (3) This section also applies to a house let under a secure tenancy granted in pursuance of section 282(3) (grant of secure tenancy on acquisition of defective dwelling), if the tenant would not otherwise have the right to purchase under this Part; and where it so applies—
- (a) paragraph (c) of subsection (2) shall not have effect;
 - (b) the words "beyond 2" in section 62(3)(b) shall not have effect.
- (4) This section does not apply—
- (a) to a house that is one of a group which has been provided with facilities (including a call system and the services of a warden) specially designed or adapted for the needs of persons of pensionable age or disabled persons; or
 - (b) where a landlord which is a registered housing association has at no time received a grant under—
 - (i) any enactment mentioned in paragraph 2 of Schedule 1 to the Housing Associations Act 1985 (grants under enactments superseded by the Housing Act 1974);
 - (ii) section 31 of the Housing Act 1974 (management grants);
 - (iii) section 41 of the Housing Associations Act 1985 (housing association grants);
 - (iv) section 54 of that Act (revenue deficit grants);
 - (v) section 55 of that Act (hostel deficit grants); or
 - (vi) section 59(2) of that Act (grants by local authorities); or
 - (c) where such a landlord has at no time let (or had available for letting) more than 100 dwellings; or
 - (d) where such a landlord is a charity—
 - (i) entered in the register of charities maintained under the Charities Act 1960 by the Charity Commissioners for England and Wales; or
 - (ii) which but for section 4(4) of, and paragraph (g) of the Second Schedule to, that Act (exempt charities) would require to be so entered; or
 - (e) where by virtue of section 49(2) of the said Act of 1960 (extent) such a landlord is not one to which Part II of that Act (registration of charities, etc.) applies, but—
 - (i) the landlord has, in respect of all periods from 14th November 1985 or from the date of first being registered by the Housing Corporation (whichever is the later) claimed and been granted (whether or not retrospectively), under section 360(1) of the Income and Corporation Taxes Act 1970 (special exemptions for charities), exemption from tax; and
 - (ii) where such exemption has not been claimed and granted in respect of all periods from the said date of registration, the rules of the landlord, registered under the Industrial and Provident Societies Act 1965 and

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- in force at that date, were such as would have admitted of such exemption had it been claimed as at that date; or
- (f) where, within a neighbourhood, the house is one of a number (not exceeding 14) of houses with a common landlord, being a landlord so mentioned, and it is the practice of that landlord to let at least one half of those houses for occupation by any or all of the following—
- (i) persons who have suffered from, or are suffering from, mental disorder (as defined in the Mental Health (Scotland) Act 1984), physical handicap or addiction to alcohol or other drugs;
 - (ii) persons who have been released from prison or other institutions;
 - (iii) young persons who have left the care of a local authority,
- and a social service is, or special facilities are, provided wholly or partly for the purpose of assisting those persons.
- (5) Where the spouse of a tenant or, where there is a joint tenancy, the spouse of a joint tenant, occupies the house as his only or principal home but is not himself a joint tenant, the right to purchase the house under subsection (1) shall not be exercised without the consent of such spouse.
- (6) A tenant may exercise his right to purchase, if he so wishes, together with one or more members of his family acting as joint purchasers, provided—
- (a) that such members are at least 18 years of age, that they have, during the period of 6 months ending with the date of service of the application to purchase, had their only or principal home with the tenant and that their residence in the house is not a breach of any obligation of the tenancy; or
 - (b) where the requirements of paragraph (a) are not satisfied, the landlord has consented.
- (7) The Secretary of State may by order made by statutory instrument amend, or add to, the descriptions of persons set out in sub-paragraphs (i) to (iii) of paragraph (f) of subsection (4).
- (8) The Commissioners of Inland Revenue shall, as regards any registered housing association, at the request of the Secretary of State, provide him and the Housing Corporation with such information as will enable them to determine whether that association is a landlord in respect of which this section will not, by virtue of subsection (4)(d), apply; and where a registered housing association is refused exemption on a claim under section 360(1) of the Income and Corporation Taxes Act 1970 the Commissioners shall forthwith inform the Secretary of State and the Housing Corporation of that fact.
- (9) Where information has been received by the Housing Corporation under subsection (8) and having regard to that information the Corporation is satisfied that the housing association to which it relates is not a landlord in respect of which this section applies, they shall make an entry to that effect in the register of housing associations maintained by them under section 3(1) of the Housing Associations Act 1985; and they shall cancel that entry where subsequent information so received in relation to that housing association is inconsistent with their being so satisfied.
- (10) In this section and the following section—
- (a) references to occupation of a house include occupation—
 - (i) in the case of joint tenants, by any one of them;
 - (ii) by any person occupying the house rent-free;

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- (iii) as the spouse of the tenant, joint tenant or of any such person;
 - (iv) as the child, or the spouse of a child, of a tenant or a person occupying the house rent free who has succeeded, directly or indirectly, to the rights of that person in a house occupation of which would be reckonable for the purposes of this section; but only in relation to any period when the child, or as the case may be spouse of the child, is at least 16 years of age; or
 - (v) in the discretion of the landlord, as a member of the family of a tenant or a person occupying the house rent free who, not being that person's spouse or child (or child's spouse), has succeeded, directly or indirectly, to such rights as are mentioned in paragraph (iv); but only in relation to any period when the member of the family is at least 16 years of age.
- (b) for the purpose of determining the period of occupation—
- (i) any interruption in occupation of 12 months or less shall be regarded as not affecting continuity; and
 - (ii) any interruption in occupation of more than 12 months and less than 24 months may at the discretion of the landlord be regarded as not affecting continuity.
- (11) The persons providing houses referred to in subsection (2)(c) (occupation requirement for exercise of right to purchase) and in section 62(3)(b) (calculation of the discount from the market value) are—
- (a) a regional, islands or district council in Scotland; any local authority in England and Wales or in Northern Ireland; and the statutory predecessors of any such council or authority, or the common good of any such council, or any trust under the control of any such council;
 - (b) the Commission for the New Towns;
 - (c) a development corporation, an urban development corporation; and any development corporation established under corresponding legislation in England and Wales or in Northern Ireland; and the statutory predecessors of any such authority;
 - (d) the Scottish Special Housing Association;
 - (e) a registered housing association;
 - (f) the Housing Corporation;
 - (g) a housing co-operative within the meaning of section 22 or a housing co-operative within the meaning of section 27B of the Housing Act 1985;
 - (h) the Development Board for Rural Wales;
 - (i) the Northern Ireland Housing Executive or any statutory predecessor;
 - (j) a police authority or (he statutory predecessors of any such authority;
 - (k) a fire authority or the statutory predecessors of any such authority;
 - (l) a water authority in Scotland; any water authority constituted under corresponding legislation in England and Wales or in Northern Ireland; and the statutory predecessors of any such authority;
 - (m) the Secretary of State, where the house was at the material time used for the purposes of the Scottish Prison Service or of a prison service for which the Home Office or the Northern Ireland Office have responsibility;
 - (n) the Crown, in relation to accommodation provided in connection with service whether by the tenant or his spouse as a member of the regular armed forces of the Crown;

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- (o) the Secretary of State, where the house was at the material time used for the purposes of a health board constituted under section 2 of the National Health Services (Scotland) Act 1978 or for the purposes of a corresponding board in England and Wales, or for the purposes of the statutory predecessors of any such board; or the Department of Health and Social Services for Northern Ireland, where the house was at the material time used for the purposes of a Health and Personal Services Board in Northern Ireland, or for the purposes of the statutory predecessors of any such board;
- (p) the Secretary of State, or the Minister of Agriculture, Fisheries and Food, where the house was at the material time used for the purposes of the Forestry Commission;
- (q) the Secretary of State, where the house was at the material time used for the purposes of a State Hospital provided by him under section 90 of the Mental Health (Scotland) Act 1984 or for the purposes of any hospital provided under corresponding legislation in England and Wales;
- (r) the Commissioners of Northern Lighthouses;
- (s) the Trinity House;
- (t) the Secretary of State, where the house was at the material time used for the purposes of Her Majesty's Coastguard;
- (u) the United Kingdom Atomic Energy Authority;
 - (v) the Secretary of State, where the house was at the material time used for the purposes of any function transferred to him under section 1(2) of the Defence (Transfer of Functions) Act 1964 or any function relating to defence conferred on him by or under any subsequent enactment;
- (w) such other person as the Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament prescribe.

62 The price

- (1) Subject to subsections (7) and (8), the price at which a tenant shall be entitled to purchase a house under this Part shall be fixed by subtracting a discount from the market value of the house.
- (2) The market value for the purposes of this section shall be determined by—
 - (a) a qualified valuer nominated by the landlord and accepted by the tenant; or
 - (b) the district valuer,as if the house were available for sale on the open market with vacant possession at the date of service of the application to purchase. For the purposes of this subsection, no account shall be taken of any element in the market value of the house which reflects an increase in value as a result of work the cost of which would qualify for a reimbursement under section 58.
- (3) Subject to subsection (5), the discount for the purposes of subsection (1) shall be—
 - (a) 32 per cent. of the market value of the house except—
 - (i) where the house is a flat, it shall be 44 per cent. of the market value;
 - (ii) where the house is one to which section 61(3) applies, it shall be 30 per cent. or, where it is a flat, 40 per cent. of the market value;together with

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- (b) an additional one per cent. or, where the house is a flat, two per cent., of the market value for every year beyond 2 of continuous occupation by the appropriate person, immediately preceding the date of service of the application to purchase, of a house (including accommodation provided as mentioned in section 61(11)(n)) or of a succession of houses provided by any persons mentioned in section 61(11),
 up to a maximum discount of 60 per cent., or where the house is a flat, 70 per cent. of the market value.
- (4) For the purposes of subsection (3), the "appropriate person" is the tenant, or if it would result in a higher discount and if she is cohabiting with him at the date of service of the application to purchase, his spouse; and where joint tenants are joint purchasers the "appropriate person" shall be whichever tenant (or, as the case may be, spouse) has the longer or longest such occupation.
- (5) The Secretary of State may by order made with the consent of the Treasury provide that, in such cases as may be specified in the order—
- (a) the minimum percentage discount,
 - (b) the percentage increase for each complete year of the qualifying period after the first two, or
 - (c) the maximum percentage discount,
- shall be such percentage, higher than that specified in subsection (3), as may be specified in the order.
- (6) An order under subsection (5)—
- (a) may make different provision with respect to different cases or descriptions of case,
 - (b) may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient, and
 - (c) shall be made by statutory instrument and shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (7) Where the house was first let under a secure tenancy (or under a tenancy which, if this Part had then been in force, would have been a secure tenancy) after 31st December 1978, the price fixed under subsection (1) shall not be less than—
- (a) the outstanding debt incurred after that date (either or both)—
 - (i) in providing;
 - (ii) in making improvements (other than by way of repair or maintenance) to,
 the house; or
 - (b) the market value of the house determined under subsection (2),
 whichever is the lesser, except in such cases as the Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, with the consent of the Treasury, prescribe.
- (8) Where the house was first let under a tenancy which, if this Part had then been in force, would have been a secure tenancy, on or before the date mentioned in subsection (7) but an outstanding debt has been incurred after that date in making improvements (other than by way of repair or maintenance) to the house, the price fixed under subsection (1) shall not be less than—
- (a) that outstanding debt; or

- (b) the market value of the house determined under subsection (2), whichever is the lesser, except in such cases as the Secretary of State may, by order made as is mentioned in subsection (7), prescribe.
- (9) In subsections (7) and (8), "outstanding debt" means—
- (a) in relation to subsection (7)(a)(i), any undischarged debt arising from—
 - (i) the cost of the erection or acquisition of the house; together with
 - (ii) the cost of acquisition of the site of the house;
 - (iii) the cost of works of improvement, alteration, or major structural repair;
 - (iv) administrative costs attributable to the matters mentioned in subparagraphs (i) to (iii); and
 - (v) where the landlord is the Housing Corporation, or a registered housing association, any proportion of capital grants which it must repay on the house being sold;
 - (b) in relation to subsection (7)(a)(ii) and in subsection (8), any undischarged debt arising from the cost of works of improvement together with—
 - (i) administrative costs attributable to these works; and
 - (ii) any proportion of capital grants as mentioned in paragraph (a)(v) where the landlord is a body mentioned there.
- (10) Where at the date of service of an offer to sell under section 63 any of the costs referred to in subsection (9) are not known, the landlord shall make an estimate of such unknown costs for the purposes of that subsection.
- (11) The Secretary of State may, with the consent of the Treasury, by order—
- (a) substitute a later date in subsection (7);
 - (b) provide that subsections (7)(a)(ii), (8) and (9) shall apply subject to such modifications as may be specified in the order.
- (12) Any such order may—
- (a) make different provision in relation to different areas, cases or classes of case;
 - (b) exclude certain areas, cases or classes of case.
- (13) An order under subsection (11) shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.