

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6

Section 202: Right of assured tenant to acquire dwelling not affected by collective enfranchisement

464. This section preserves the Right to Acquire for assured tenants of Registered Social Landlords (RSLs) in cases where long leaseholders living in the same block of flats as non-qualifying assured tenants enfranchise (i.e. purchase the freehold compulsorily).
465. Under the Leasehold Reform, Housing and Urban Development Act 1993, qualifying tenants of flats (i.e. long leaseholders) were given rights to collective enfranchisement. By Schedule 9, paragraph 3, where flats are let out to non-qualifying tenants (i.e. those who are not long leaseholders) by a housing association freeholder, and enfranchisement occurs, there is a mandatory leaseback by the new freeholder to the housing association of those flats, so that the housing association remains as the immediate landlord of the tenants. (Housing association includes RSLs in this context).
466. The Right to Acquire (RTA) is a statutory scheme under which some tenants of RSLs are given the right to purchase their rented home at a discount by section 16 of the Housing Act 1996. Previously, in order for the Right to Acquire to apply, section 16(3) (a) required that the freehold interest in the dwelling must at all times have been held by an RSL or a public sector landlord.
467. Therefore, when a group of RSL leaseholders enfranchise, the other RSL assured tenants in the same block who are not long leaseholders lose their statutory Right to Acquire their rented home. This was an unintended consequence of leasehold legislation.
468. **Section 202** extends the definition of freehold interest in the dwelling (in section 16(3) of the Housing Act 1996) so that it still applies even where a mandatory leaseback has taken place. The section thereby preserves the Right to Acquire for RSL assured tenants in cases where a group of leaseholders in the same block buy the freehold. The Right to Acquire is conferred also upon those from whom it has already inadvertently been removed.