



# Housing and Regeneration Act 2008

## 2008 CHAPTER 17

### PART 3

#### OTHER PROVISIONS

#### CHAPTER 2

##### LANDLORD AND TENANT MATTERS

##### *Right to buy etc: miscellaneous*

#### **304 Exclusion of the right to buy: possession orders**

- (1) For section 121(1) of the Housing Act 1985 (c. 68) (circumstances in which the right to buy cannot be exercised) substitute—

“(1) The right to buy cannot be exercised if the tenant is subject to an order of the court for possession of the dwelling-house.”

- (2) Subsection (1) does not apply where the tenant has served a notice under section 122 of that Act (tenant's notice claiming to exercise right to buy) before the coming into force of subsection (1) above and the notice is not withdrawn.

#### **305 Exclusion of the right to buy: demolition notices**

Schedule 13 (which makes provision about demolition notices) has effect.

#### **306 Review of determination of value**

- (1) The Housing Act 1985 is amended as follows.
- (2) After section 128 (determination of value by district valuer) insert—

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### **“128A Determination of value: review notices**

- (1) Subsection (2) applies if the value of a dwelling-house has been determined or re-determined under section 128 (“the section 128 determination”).
- (2) The district valuer may—
  - (a) on the valuer's own initiative; or
  - (b) at the request of the landlord or the tenant of the dwelling-house;
 serve on the landlord and the tenant a notice of intention to review the section 128 determination giving reasons for the intention (“a review notice”).
- (3) A request under subsection (2)(b) must—
  - (a) be in writing;
  - (b) state the reason it is being made; and
  - (c) confirm that the landlord has not made to the tenant a grant of the kind mentioned in section 138(1) in respect of the claim by the tenant to exercise the right to buy in respect of the dwelling-house.
- (4) The landlord or the tenant may not make a request under subsection (2)(b) after the end of the period of 28 days beginning with the section 128(5) service date.
- (5) The district valuer must, before the end of the period of 14 days beginning with the day on which such a request is made, serve on the landlord and the tenant—
  - (a) a review notice; or
  - (b) a notice stating—
    - (i) that the request was made;
    - (ii) that the district valuer has decided not to comply with it; and
    - (iii) the reasons for the decision.
- (6) A review notice may not be served after the end of the period of 42 days beginning with the section 128(5) service date.
- (7) A review notice may not be served in relation to a determination which is subject to a re-determination required in pursuance of section 128(3) (but this does not prevent the service of a review notice in relation to the re-determination).
- (8) A review notice may not be served if the landlord has made a grant of the kind mentioned in subsection (3)(c).
- (9) A person who makes a request under subsection (2)(b) must inform the district valuer if a grant of the kind mentioned in subsection (3)(c) is made during the period of 14 days mentioned in subsection (5).
- (10) Subsection (11) applies if the district valuer is considering whether to serve a review notice on the valuer's own initiative.
- (11) The landlord or the tenant must, if requested by the district valuer, inform the valuer whether a grant of the kind mentioned in subsection (3)(c) has been made.

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- (12) In this section and section 128B—
- “a review notice” has the meaning given by subsection (2);
  - “the section 128 determination” has the meaning given by subsection (1);
  - “the section 128(5) service date” means the day on which the landlord serves a notice on the tenant under section 128(5) in relation to the section 128 determination.

### **128B Review of determination of value**

- (1) The district valuer must review the section 128 determination as soon as reasonably practicable after serving a review notice.
- (2) Subsection (3) applies if, following the review, the district valuer decides that neither of the withdrawal conditions is met.
- (3) The district valuer must, as soon as reasonably practicable, serve on the landlord and the tenant a notice stating—
  - (a) the decision;
  - (b) the reasons for it; and
  - (c) that no further determination or (as the case may be) re-determination is to be made under this section.
- (4) Subsection (5) applies if, following the review, the district valuer decides that either withdrawal condition is met or both are met.
- (5) The district valuer must—
  - (a) as soon as reasonably practicable, withdraw the section 128 determination by serving a further determination notice on the landlord and the tenant; and
  - (b) make a further determination or (as the case may be) re-determination of the value of the dwelling-house at the relevant time.
- (6) Before making such a determination or re-determination, the district valuer must consider any representation made to the valuer by the landlord or the tenant before the end of the period of 14 days beginning with the day on which the further determination notice was served.
- (7) As soon as practicable after such a determination or re-determination has been made, the landlord must serve on the tenant a determination effect notice.
- (8) A determination effect notice is a notice stating—
  - (a) the effect of the further determination or (as the case may be) re-determination; and
  - (b) the matters mentioned in section 125(2) and (3).
- (9) For the purposes of this section, the withdrawal conditions are—
  - (a) that a significant error was made in the section 128 determination; or
  - (b) that the district valuer did not comply with section 128(4) in relation to the section 128 determination.

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- (10) This section does not apply to a determination which is subject to a re-determination required in pursuance of section 128(3) (but this does not prevent this section applying to the re-determination).
- (11) In this section—
- “a further determination notice” is a notice stating—
- (a) that the section 128 determination is withdrawn;
  - (b) the reasons for the withdrawal; and
  - (c) that a further determination or (as the case may be) re-determination of the value of the dwelling-house at the relevant time will be made;
- “significant error”, in relation to the section 128 determination, means an error of fact, or a number of such errors, made in the section 128 determination as a result of which the value of the dwelling-house determined or (as the case may be) re-determined was at least 5% more or less than it would otherwise have been.”
- (3) In section 125D(2) (period for serving tenant's notice of intention), in paragraph (b), for the words from “, the service” to the end substitute “ (or where the landlord exercises his right to have the value of the dwelling-house re-determined by the district valuer), the relevant event ”.
- (4) After section 125D(2) (period for serving tenant's notice of intention) insert—
- “(3) In subsection (2)(b) “the relevant event” means—
- (a) where a review notice was capable of being served under section 128A in relation to the determination or re-determination but no such notice was served during the period permitted by that section, the service of the notice under section 128(5) stating the effect of the determination or re-determination,
  - (b) where a review notice was served under section 128A in relation to the determination or re-determination and section 128B(3) applied, the service on the tenant of the notice under section 128B(3), and
  - (c) where a review notice was served under section 128A in relation to the determination or re-determination and section 128B(5) applied, the service of the notice under section 128B(7).”
- (5) In section 128(2) (power of tenant to require determination or re-determination of value) omit “, or as the case may be re-determined,”.
- (6) In section 128(5) (notice of determination or re-determination) for the words from “stating” to the end substitute “stating—
- (a) the effect of the determination or re-determination,
  - (b) the matters mentioned in section 125(2) and (3) (terms for exercise of right to buy), and
  - (c) the effect of section 128A(2) (right of district valuer to serve review notice and of landlord and tenant to request that such a notice is served).”
- (7) After section 128(5) (notice of determination or redetermination) insert—
- “(5A) The landlord shall, as soon as practicable, serve a copy of the notice on the district valuer if—

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- (a) the district valuer requests it; or
  - (b) the landlord requests a review of the determination or re-determination under section 128A(2)(b).
- (5B) The tenant shall, as soon as practicable, serve a copy of the notice on the district valuer if the tenant requests a review of the determination or re-determination under section 128A(2)(b).
- (5C) For the purposes of subsections (5A) and (5B) it does not matter whether the request in question was made before, on or after the service of the notice in accordance with subsection (5).”
- (8) In section 136(2) (period for serving notice of intention where there is a change of secure tenant), in paragraph (b), for the words from “, the service” to the end substitute “ (or where the right to have the value of the dwelling-house re-determined by the district valuer is or has been exercised by the landlord), the relevant event ”.
- (9) After section 136(2) (period for serving notice of intention where there is a change of secure tenant) insert—
  - “(2A) In subsection (2)(b) “the relevant event” means—
    - (a) where a review notice was capable of being served under section 128A in relation to the determination or re-determination but no such notice was served during the period permitted by that section, the service of the notice under section 128(5) stating the effect of the determination or re-determination,
    - (b) where a review notice was served under section 128A in relation to the determination or re-determination and section 128B(3) applied, the service on the new tenant or (as the case may be) the former tenant of the notice under section 128B(3), and
    - (c) where a review notice was served under section 128A in relation to the determination or re-determination and section 128B(5) applied, the service of the notice under section 128B(7).”
- (10) In section 140(4) (circumstances in which landlord's first notice to complete may not be served), after paragraph (a), insert—
  - “(aa) a review notice (within the meaning of section 128A) has been served in relation to such a determination or re-determination, section 128B applies and the district valuer has neither—
    - (i) served a notice under section 128B(3) (refusal to make further determination), nor
    - (ii) served a notice under section 128B(7) (a determination effect notice),
  - (ab) no such review notice has been served but such a notice may still be served under section 128A.”.
- (11) In section 181(1) (jurisdiction of county court) after “128” insert “, 128B ”.
- (12) This section does not apply to any determination or re-determination under section 128 of the Housing Act 1985 (c. 68) which was required before the coming into force of this section.

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### **307 Approved lending institutions**

- (1) In section 156 of the Housing Act 1985 (liability to repay is a charge on the premises)
- (a) in subsection (4) for “and any body specified, or of a class or description specified, in an order made by the Secretary of State” substitute— “ an authorised mortgage lender. ”, and
  - (b) omit subsections (5) and (6).
- (2) In section 622(1) of that Act (minor definitions: general), after the definition of “authorised insurer”, insert—
- ““authorised mortgage lender” means—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to enter into a regulated mortgage contract as lender,
  - (b) an EEA firm of the kind mentioned in paragraph (5)(b) of Schedule 3 to that Act who has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to enter into a regulated mortgage contract as lender, or
  - (c) a Treaty firm within the meaning of Schedule 4 to that Act who has permission under paragraph 4 of that Schedule (as a result of qualifying for authorisation under paragraph 2 of that Schedule) to enter into a regulated mortgage contract as lender;”.
- (3) In section 622(2) of that Act (interpretation of “authorised deposit taker” and “authorised insurer”) for “and “authorised insurer”” substitute “ “ , “authorised insurer” and “authorised mortgage lender” ”.
- (4) In section 36(4) of that Act (priority of charges: approved lending institutions) for the words from “and any body” to the end substitute— “ an authorised mortgage lender. ”
- (5) In section 151B(5) of that Act (priority of charges: approved lending institutions) for the words from “and any body” to the end substitute— “ an authorised mortgage lender. ”
- (6) In paragraph 2(5) of Schedule 11 to the Housing Act 1988 (c. 50) (priority of charges: approved lending institutions) for paragraph (e) substitute—
- “(e) an authorised mortgage lender (within the meaning of the Housing Act 1985 (see section 622 of that Act)).”
- (7) In section 12(5) of the Housing Act 1996 (c. 52) (priority of charges: approved lending institutions) for paragraph (c) substitute—
- “(c) an authorised mortgage lender (within the meaning of the Housing Act 1985 (see section 622 of that Act)).”

VALID FROM 01/12/2008

### **308 Former right to buy and other flats: service charge loans**

- (1) In section 450C(4) of the Housing Act 1985 (c. 68) (loans in respect of service charges on former right to buy flats and other housing authority flats)—

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- (a) in paragraph (a) for “as regards the rate of interest payable on” substitute “in a case where a rate of interest is payable on some or all of”, and
- (b) after paragraph (a) insert—
  - “(aa) in a case where amounts calculated by reference to the market value of the flat are payable instead of (or as well as) interest, make provision about calculating the market value of the flat (including imposing charges for the services of district valuers);”.
- (2) The powers conferred by section 450C(3) of that Act include, in relation to loans made before the coming into force of subsection (1) above, the power to prescribe terms, or (as the case may be) make provision, of the kind envisaged by subsection (1) (b) above.
- (3) But any such terms or provision are not to apply to any particular loan made before the coming into force of subsection (1) above unless the landlord and tenant agree that they are to apply in that case.

VALID FROM 01/12/2008

### **309 Former right to buy and other flats: equity share purchases**

After section 450C of the Housing Act 1985 (c. 68) (loans in respect of service charges) insert—

*“Other financial assistance in respect of service charges*

#### **450D Purchase of equitable interests**

- (1) The appropriate national authority may by regulations provide that where—
  - (a) a housing authority is the landlord of a flat under a long lease granted or assigned by the housing authority or another housing authority, and
  - (b) the tenant is liable under the terms of the lease to pay service charges in respect of repairs or improvements (whether to the flat, the building in which it is situated or any other building or land),the landlord may, with the agreement of the tenant and in such circumstances as may be prescribed, purchase an equitable interest in the flat for the purpose of assisting the tenant to meet some or all of the service charge payments.
- (2) Regulations under this section shall ensure that the purchase price is to be met by the landlord reducing or (as the case may be) cancelling the service charge payable to the landlord by the tenant to such extent as corresponds to the amount concerned.
- (3) Regulations under this section may, in particular—
  - (a) provide that the power to purchase an equitable interest does not arise in the case of particular descriptions of landlord;

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- (b) make provision about calculating the purchase price (including provision about any discounts and about imposing charges for the services of district valuers);
  - (c) provide for—
    - (i) the tenant to be liable for the administrative expenses of the landlord in connection with the purchase;
    - (ii) such expenses not to exceed such amount (if any) as may be specified in the regulations;
    - (iii) the purchase price to include, at the option of the purchaser, a deduction for such expenses;
  - (d) provide for an alteration, as a result of the purchase of the equitable interest, in the liability of the tenant for future service charges or improvement contributions.
- (4) Regulations under this section may not contain provision for cases where the Secretary of State or the Welsh Ministers are the landlord unless the Welsh Ministers are the landlord—
- (a) as the result of the exercise by them of functions under Part 3 of the Housing Associations Act 1985; or
  - (b) as the result of—
    - (i) the exercise by the former National Assembly for Wales, the Secretary of State, Housing for Wales or the Housing Corporation of functions under Part 3 of the Act of 1985; and
    - (ii) the transfer of the flat to the Welsh Ministers by virtue of paragraph 39 of Schedule 11 to the Government of Wales Act 2006.
- (5) For the purposes of this section a long lease granted or assigned by—
- (a) the Welsh Ministers, or
  - (b) in a case falling within subsection (4)(b), the former National Assembly for Wales, the Secretary of State, Housing for Wales or the Housing Corporation,
- shall be taken to have been granted or assigned by a housing authority if (but only if) the person concerned granted or assigned it in exercise of its powers under section 90 of the Housing Associations Act 1985.
- (6) This section does not affect any other power of the landlord to purchase an equitable interest in the flat for the purpose of assisting the tenant to meet some or all of the service charge payments.
- (7) Regulations under this section may apply whenever the lease concerned was granted or assigned and whenever the service charge concerned became payable.
- (8) Regulations under this section—
- (a) are to be made by statutory instrument;
  - (b) may make different provision for different cases or descriptions of case including different provision for different areas;
  - (c) may contain such incidental, supplementary and transitional provisions as the appropriate national authority considers appropriate.



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- (9) An instrument containing regulations made under this section—
- (a) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (10) In this section—
- “appropriate national authority” means—
    - (a) in relation to England, the Secretary of State; and
    - (b) in relation to Wales, the Welsh Ministers;
  - “former National Assembly for Wales” means the Assembly constituted by the Government of Wales Act 1998;
  - “housing authority”—
    - (a) does not include a registered provider of social housing, or a registered social landlord, which is a co-operative housing association;
    - (b) includes a co-operative housing association which is neither a registered provider of social housing nor a registered social landlord;
  - “improvement contribution” has the same meaning as in Part 5 (see section 187);
  - “repairs” includes works for making good a structural defect.”

#### Commencement Information

**II** S. 309 in force at 1.12.2008 for specified purposes by [S.I. 2008/3068](#), [art. 4\(9\)](#) (with [arts. 6-13](#))

### 310 Other amendments

- (1) In paragraph 11(5B) of Schedule 5 to the Housing Act 1985 (c. 68) (exceptions to the right to buy for certain accommodation for the elderly: appeals etc. to the High Court possible by virtue of disapplication of section 231(4) of the Housing Act 2004 (c. 34)) for “Section 231” substitute “ Section 231(1), (2), (3) and (5) ”.
- (2) Subsection (1) does not apply to—
  - (a) appeals begun, or cases stated and signed, before the coming into force of that subsection, or
  - (b) rights of appeal, or rights to have a case stated and signed, which have accrued before that time.
- (3) In paragraph 5 of Schedule 5A to the Housing Act 1985 (service of initial demolition notices) for “Schedule 13” substitute “ Schedule 5 ”.

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