

SCHEDULE 2

PART V AS IT APPLIES IN CASES WHERE THE RIGHT TO BUY IS PRESERVED THE RIGHT TO BUY

Preservation of right to buy on disposal to private sector landlord

171A Cases in which right to buy is preserved.

(1) The provisions of this Part continue to apply where a person ceases to be a secure tenant of a dwelling-house by reason of the disposal by the landlord of an interest in the dwelling-house to a person who is not an authority or body within section 80 (the landlord condition for secure tenancies).

(2) In this Part—

- (a) references to the preservation of the right to buy and to a person having the preserved right to buy are to the continued application of the provisions of this Part by virtue of this section and to a person in relation to whom those provisions so apply;
- (b) “qualifying disposal” means a disposal in relation to which this section applies, and
- (c) the “former secure tenant” and the “former landlord” are the persons mentioned in subsection (1).

(3) This section does not apply—

- (a) where the former landlord was a person against whom the right to buy could not be exercised by virtue of paragraph 1, 2 or 3 of Schedule 5 (charities and certain housing associations), or
- (b) in such other cases as may be excepted from the operation of this section by order of the Secretary of State.

(4) Orders under subsection (3)(b)—

- (a) may relate to particular disposals and may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
- (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

171B Extent of preserved right: qualifying persons and dwelling-house.

(1) A person to whom this section applies has the preserved right to buy so long as he occupies the relevant dwelling-house as his only or principal home, subject to the following provisions of this Part.

(2) References in this Part to a “qualifying person” and “qualifying dwelling-house”, in relation to the preserved right to buy, are to a person who has that right and to a dwelling-house in relation to which a person has that right.

(3) The following are persons to whom this section applies—

- (a) the former secure tenant, or in the case of a joint tenancy, each of them;
- (b) a qualifying successor as defined in subsection (4); and
- (c) a person to whom a tenancy of a dwelling-house is granted jointly with a person who has the preserved right to buy in relation to that dwelling-house.

(4) The following are qualifying successors for this purpose—

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- (a) where the former secure tenancy was not a joint tenancy and, immediately before his death, the former secure tenant was tenant under an assured tenancy of a dwelling-house in relation to which he had the preserved right to buy, a member of the former secure tenant's family who acquired that assured tenancy under the will or intestacy of the former secure tenant;
- (aa) where the former secure tenancy was not a joint tenancy, a member of the former secure tenant's family to whom the former secure tenant assigned his assured tenancy of a dwelling-house in relation to which, immediately before the assignment, he had the preserved right to buy;
- (b) a person who becomes the tenant of a dwelling-house in pursuance of—
 - (i) a property adjustment order under section 24 of the Matrimonial Causes Act 1973, or
 - (ii) an order under Schedule 1 to the Matrimonial Homes Act 1983 transferring the tenancy,

in place of a person who had the preserved right to buy in relation to that dwelling-house.

- (5) The relevant dwelling-house is in the first instance—
 - (a) in relation to a person within paragraph (a) of subsection (3), the dwelling-house which was the subject of the qualifying disposal;
 - (b) in relation to a person within paragraph (b) of that subsection, the dwelling-house of which he acquired the assured tenancy, became the assignee of the assured tenancy or became the tenant, as mentioned in subsection (4)(a), (aa) or (b);
 - (c) in relation to a person within paragraph (c) of subsection (3), the dwelling-house of which he became a joint tenant as mentioned in that paragraph.

(6) If a person having the preserved right to buy becomes the tenant of another dwelling-house in place of the relevant dwelling-house (whether the new dwelling-house is entirely different or partly or substantially the same as the previous dwelling-house) and the landlord is the same person as the landlord of the previous dwelling-house or, where that landlord was a company, is a connected company, the new dwelling-house becomes the relevant dwelling-house for the purposes of the preserved right to buy.

For this purpose "connected company" means a subsidiary or holding company within the meaning of section 736 of the Companies Act 1985.

171C Modifications of this Part in relation to preserved right.

(1) Where the right to buy is preserved, the provisions of this Part have effect subject to such exceptions, adaptations and other modifications as may be prescribed by regulations made by the Secretary of State.

- (2) The regulations may in particular provide—
 - (a) that paragraphs 1, 3 and 5 to 11 of Schedule 5 (certain exceptions to the right to buy) do not apply;
 - (b) that the right to a mortgage is exercisable against the former landlord or, if the former landlord was a housing association, against the Housing Corporation;
 - (c) that the provisions of this Part relating to the right to be granted a shared ownership lease do not apply; and
 - (d) that the landlord is not required to but may include a covenant for the repayment of discount, provided its terms are no more onerous than those of the covenant provided for in section 155.

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(3) The prescribed exceptions, adaptations and other modifications shall take the form of textual amendments of the provisions of this Part as they apply in cases where the right to buy is preserved; and the first regulations, and any subsequent consolidating regulations, shall set out the provisions of this Part as they so apply.

(4) The regulations—

- (a) may make different provision for different cases or descriptions of case, including different provision for different areas,
- (b) may contain such incidental, supplementary and transitional provisions as the Secretary of State considers appropriate, and
- (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) The disapplication by the regulations of paragraph 1 of Schedule 5 shall not be taken to authorise any action on the part of a charity which would conflict with the trusts of the charity.

171D Subsequent dealings: disposal of landlord's interest in qualifying dwelling-house.

(1) The disposal by the landlord of an interest in the qualifying dwelling-house, whether his whole interest or a lesser interest, does not affect the preserved right to buy, unless—

- (a) as a result of the disposal an authority or body within section 80(1) (the landlord condition for secure tenancies) becomes the landlord of the qualifying person or persons, or
- (b) paragraph 6 of Schedule 9A applies (effect of failure to register entry protecting preserved right to buy),

in which case the right to buy ceases to be preserved.

(2) The disposal by the landlord of a qualifying dwelling-house of less than his whole interest as landlord of the dwelling-house, or in part of it, requires the consent of the Secretary of State, unless the disposal is to the qualifying person or persons.

(3) Consent may be given in relation to a particular disposal or generally in relation to disposals of a particular description and may, in either case, be given subject to conditions.

(4) A disposal made without the consent required by subsection (2) is void, except in a case where, by reason of a failure to make the entries on the land register or land charges register required by Schedule 9A, the preserved right to buy does not bind the person to whom the disposal is made.

171E Subsequent dealings: termination of landlord's interest in qualifying dwelling-house.

(1) On the termination of the landlord's interest in the qualifying dwelling-house—

- (a) on the occurrence of an event determining his estate or interest, or by re-entry on a breach of condition or forfeiture, or
- (b) where the interest is a leasehold interest, by notice given by him or a superior landlord, on the expiry or surrender of the term, or otherwise (subject to subsection (2)),

the right to buy ceases to be preserved.

(2) The termination of the landlord's interest by merger on his acquiring a superior interest, or on the acquisition by another person of the landlord's interest together with a superior interest, does not affect the preserved right to buy, unless—

- (a) as a result of the acquisition an authority or body within section 80(1) (the landlord condition for secure tenancies) becomes the landlord of the qualifying person or persons, or

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- (b) paragraph 6 of Schedule 9A applies (effect of failure to register entry protecting preserved right to buy),

in which case the right to buy ceases to be preserved.

(3) Where the termination of the landlord's interest as mentioned in subsection (1) is caused by the act or omission of the landlord, a qualifying person who is thereby deprived of the preserved right to buy is entitled to be compensated by him.

171F Subsequent dealings: transfer of qualifying person to alternative accommodation.

(1) The court shall not order a qualifying person to give up possession of the qualifying dwelling-house in pursuance of section 98(1)(a) of the Rent Act 1977 or on Ground 9 in Schedule 2 to the Housing Act 1988 (suitable alternative accommodation) unless the court is satisfied—

- (a) that the preserved right to buy will, by virtue of section 171B(6) (accommodation with same landlord or connected company), continue to be exercisable in relation to the dwelling-house offered by way of alternative accommodation and that the interest of the landlord in the new dwelling-house will be—
 - (i) where the new dwelling-house is a house, not less than the interest of the landlord in the existing dwelling-house, or
 - (ii) where the new dwelling-house is a flat, not less than the interest of the landlord in the existing dwelling-house or a term of years of which 80 years or more remain unexpired, whichever is the less; or
- (b) that the landlord of the new dwelling-house will be an authority or body within section 80(1) (the landlord condition for secure tenancies).

171G Land registration and related matters.

171G. Schedule 9A has effect with respect to registration of title and related matters arising in connection with the preservation of the right to buy.

171H Disposal after notice claiming to exercise right to buy, etc.

(1) Where notice has been given in respect of a dwelling-house claiming to exercise the right to buy and before the completion of the exercise of that right the dwelling-house is the subject of—

- (a) a qualifying disposal, or
- (b) a disposal to which section 171D(1)(a) or 171E(2)(a) applies (disposal to authority or body satisfying landlord condition for secure tenancies),

all parties shall, subject to subsection (2), be in the same position as if the disponent had become the landlord before the notice was given and had been given that notice and any further notice given by the tenant to the landlord and had taken all steps which the landlord had taken.

- (2) If the circumstances after the disposal differ in any material respect, as for example where—
 - (a) the interest of the disponent in the dwelling-house after the disposal differs from that of the disponent before the disposal, or
 - (c) any of the provisions of Schedule 5 (exceptions to the right to buy) becomes or ceases to be applicable,

all those concerned shall, as soon as practicable after the disposal, take all such steps (whether by way of amending or withdrawing and re-serving any notice or extending any period or otherwise) as may be requisite for the purpose of securing that all parties are, as nearly as may be, in the same position as they would have been if those circumstances had obtained before the disposal.