

# HOUSING (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### BACKGROUND AND OVERVIEW

#### Part 2 – Tenants of Social Landlords

#### Chapter 1 – Scottish Secure Tenancies

#### Section 11: Scottish secure tenancy

22. This section specifies which tenancies are to be Scottish secure tenancies and makes provision for joint tenancies and for transition from existing tenancies to the Scottish secure tenancy.
23. The Scottish Ministers may make orders specifying the dates on or after which the tenancies of any prescribed landlord or description of landlord will be Scottish secure tenancies. This would enable all tenancies to convert at the same time, but allows for phased implementation where necessary. Such orders may (*subsection (2)*) include provisions to protect the rights of the landlord, the tenant or a third party (eg a person with a heritable security over the property) in relation to a tenancy which is converted to a Scottish secure tenancy. An order under that subsection could be used to protect the terms and conditions of the right to buy for existing tenants.
24. In general, a tenancy will only be a Scottish secure tenancy if:
  - the house is let as a separate dwelling;
  - the tenant is an individual and the house is the tenant's only or principal home; and
  - the landlord is a local authority landlord (as defined in *subsection (3)*), a registered social landlord, or a water or sewerage authority.
  - where the landlord is a registered social landlord which is a co-operative housing association, the tenant is a member of the association; and
  - the tenancy was created on or after such date as specified by order or before that date if of a description specified by order
25. This section introduces *Schedule 1* which defines tenancies which could meet these general criteria but will nonetheless not be Scottish secure tenancies.
26. *Subsection (8)* provides that a tenancy which is a Scottish secure tenancy will continue to be one even where the landlord is no longer a local authority, a registered social landlord or a water or sewerage authority or where the house is no longer the only or principal home of the tenant, or where the landlord is a registered social landlord which is a co-operative housing association and the tenant is no longer a member of the association.
27. *Subsections (5) and (6)* make provisions for joint tenancies, including a requirement on a landlord to grant a joint tenancy, where it is requested in writing, unless it has reasonable grounds for not doing so. *Subsection (9)* protects the tenancy rights of those tenants who have been temporarily housed elsewhere.

### ***Section 12: Restriction on termination of tenancy***

28. This section sets out the six ways in which a Scottish secure tenancy may be terminated:
- by a court order for recovery of possession on one of the 15 grounds in *Part 1 of schedule 2* (under section 16(2));
  - where a tenancy has been abandoned (by operation of section 18(2));
  - on the death of a tenant, and subject to the provisions relating to succession (by operation of section 22);
  - on conversion to a short Scottish secure tenancy (by operation of section 35);
  - by written agreement between the landlord and tenant;
  - by 4 weeks' notice given by the tenant to the landlord.
29. *Subsections (2) and (3)* provide security of tenure for a tenant who is being accommodated temporarily in another house while their own house is not available for occupation.

### ***Section 13: Termination of joint tenant's interest in tenancy***

30. *Section 13* provides for the termination of a joint tenant's interest in the tenancy by 4 weeks notice given to the landlord and to each of the other joint tenants.

### ***Section 14: Proceedings for possession***

31. This section entitles a landlord under a Scottish secure tenancy to seek a court order for recovery of possession of a house. *Subsections (2) to (5)* specify the procedures which the landlord must follow in such circumstances, and include a power for the Scottish Ministers to prescribe the form of notice to tenants. Such a notice must be served on the tenant and any qualifying occupier and must include the ground on which the court order will be sought, which must be one of the 15 grounds set out in *Part 1 of schedule 2*, and must be served at least 4 weeks before the court order is sought. *Subsection (6)* defines "qualifying occupier" for the purposes of this section and section 15.

### ***Section 15: Rights of qualifying occupiers in possession proceedings***

32. This section enables a qualifying occupier (defined in section 14(6)) to play a part in possession proceedings, so that their rights as well as the tenant's rights may be considered by the court.

### ***Section 16: Powers of court in possession proceedings***

33. This section sets out the circumstances in which the court will make an order for terminating a Scottish secure tenancy and giving the landlord the right to recover possession of the house on a ground set out in *Part 1 of schedule 2*. In relation to grounds 1 to 7 ("conduct grounds") the court must make the order where it considers it reasonable to do so. In relation to grounds 8 to 14 ("management grounds"), the court must make the order if it considers other suitable accommodation will be available for the tenant. In relation to ground 15, the court must make the order where it considers that it is reasonable to do so and that other suitable accommodation will be available. Suitability of alternative accommodation is determined by reference to *Part 2 of schedule 2*. In relation to ground 10, if the house is being redeveloped the court can make an order entitling the tenant to return to the house when the work has been completed.
34. This section also sets out the matters to which the court should have regard in considering whether it is reasonable to make an order for termination of the tenancy.

**Section 17: Abandoned tenancies**

35. This section enables a landlord under a Scottish secure tenancy to take action to secure and take possession of a house which appears to have been abandoned by the tenant. The procedures to be followed before taking possession are set out in section 18.

**Section 18: Repossession**

36. This section sets out the procedures which must be followed by a landlord wishing to take possession of an abandoned house, in the circumstances defined in section 17. The landlord must:
- give 4 weeks notice in writing (*subsection (1)*);
  - make sufficient inquiries to satisfy itself that the house is unoccupied and that the tenant has no intention of re-occupying it (*subsection (2)*); and
  - serve a further notice on the tenant (*subsection (2)*), which brings the tenancy to an immediate end and allows the landlord to take possession of the house without further proceedings.
37. *Subsection (4)* gives an order making power to the Scottish Ministers to outline arrangements for the securing of tenants' belongings in their absence and arrangements for their return or disposal.

**Section 19: Tenant's recourse to court**

38. This section gives a Scottish secure tenant whose house has been repossessed in accordance with the abandonment procedures in sections 17 and 18 a right of appeal to the court. Where the court finds that the landlord acted wrongly or unreasonably it must order the tenancy to continue or direct the landlord to provide other suitable accommodation (as defined in *Part 2 of schedule 2*). *Subsection (4)* enables the court to make further orders in relation to cases where a tenant has successfully challenged an abandonment order, for example to instruct a landlord to forego rent due for the period of apparent abandonment.

**Section 20: Abandonment by joint tenant**

39. This section enables a landlord under a Scottish secure tenancy to take action to bring to an end the interest of a joint tenant where that joint tenant appears to have abandoned the joint tenancy. The procedures to be followed before taking possession are set out in *subsections (2) and (3)*. The landlord must:
- give 4 weeks notice in writing (*subsection (2)*);
  - make sufficient inquiries to satisfy itself that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant's home (*subsection (3)*); and
  - serve a further notice on the abandoning tenant (*subsection (3)*), bringing the abandoning tenant's interest in the tenancy to an end with effect from a date specified in the notice which must be not earlier than 8 weeks after the date of service of the notice.

**Section 21: Joint tenancies: abandoning tenant's recourse to court**

40. This section gives a joint tenant a right of recourse to the court where the tenant is aggrieved by a landlord bringing to an end his interest in the property under the abandonment procedures in section 20. Where the court finds in favour of the tenant it can effectively reinstate the joint tenant or direct the landlord to make other suitable accommodation available. The court can also make a further order providing, for example, for compensation to be paid.

**Section 22: Succession to Scottish secure tenancy**

41. This section and [schedule 3](#) make provision for succession to a Scottish secure tenancy on the death of the tenant. The section includes a right to a second round of succession ([subsection \(2\)](#)). [Schedule 3](#) defines who is a person qualified to succeed to a tenancy and the circumstances in which they can do so. A qualified person is, first, the tenant's spouse or cohabitee, or a surviving joint tenant; second, a member of the tenant's family aged 16 or over; or, third, a carer who is providing, or who has provided, care for the tenant or a member of the tenant's family. The carer must be aged 16 or over, and have given up his or her previous only or principal home, to be qualified to succeed. In all three cases the house of the deceased tenant must have been the only or principal home for the qualifying person.
42. Where a house has been designed or substantially adapted for the use of persons with special needs, then [paragraph 5 of schedule 3](#) specifies that only spouses, cohabitees, joint tenants or persons with special needs can succeed to that tenancy. Other persons who would otherwise be qualified to succeed have a right to alternative suitable accommodation by virtue of [subsections \(6\) and \(7\)](#).
43. [Subsection \(8\)](#) clarifies that tenancies are not terminated on the death of a joint tenant if the remaining tenant or tenants continue to live in the house. [Subsection \(9\)](#) makes provision for a person who would have succeeded to the tenancy, but who cannot because the second round of succession has passed, to remain in the house for 6 months but not under a Scottish secure tenancy. [Subsection \(10\)](#) makes provision for a Scottish secure tenancy to continue (for the purposes of succession) where a tenant has to move to alternative accommodation.

**Section 23: Tenant's right to written tenancy agreement and to information**

44. This section gives tenants a right to a written tenancy agreement and to information about the landlord's policies and procedures. It permits the Scottish Ministers to issue guidance as to the form of the tenancy in a model agreement. [Subsection \(4\)](#) requires landlords to provide a prospective tenant with information, prior to the taking up of the tenancy, about the right to buy (this could include, for example, whether or not there are any relevant exemptions), and the obligations which the tenant is likely to incur if the right to buy is exercised (including responsibility for maintenance of parts of the building and areas owned in common). [Subsection \(5\)](#) requires the landlord to notify the tenant of any changes to the legislation, including subordinate legislation, governing the right to buy which might affect the tenant's right to purchase. [Subsection \(6\)](#) outlines information that the landlord must supply in relation to its complaints procedure. It also lists other information that it must supply on request.

**Section 24: Restriction on variation of tenancy**

45. This section limits the way in which changes to a Scottish secure tenancy can be made. Rents and other charges can be varied in accordance with section 25 and terms and conditions can be varied by court order under section 26, but otherwise the terms of the tenancy can only be changed by written agreement between the landlord and tenant, in line with the Requirements of Writing (Scotland) Act 1995 (which sets out provisions relating to the signing of contracts).

**Section 25: Increase in rent or charges**

46. This section requires landlords to give each tenant not less than four weeks notice, in writing, before increasing rents or other charges. Where a landlord proposes to increase rents generally, it must first consult those tenants who would be affected.

***Section 26: Variation of tenancy by court order***

47. This section allows either a landlord or a tenant to apply for a court order to change a term of Scottish secure tenancy where there is a dispute on a variation in terms. The grounds on which a tenant can seek a change are set out in *subsection (2)*.
48. The court has power to make any change in a term of a tenancy, apart from the level of rent or charge, that it considers reasonable having particular regard to safety considerations or likelihood of damage to the house. The court can require the tenant to pay compensation to the landlord for any financial loss arising from the variation, and to consult anyone who might be affected by the proposed change.

***Sections 27 to 31 and [schedules 4 and 5](#): Repairs and improvements***

49. Taken together, these provisions set out the rights and responsibilities of the landlord and tenant under a Scottish secure tenancy with respect to repairs and improvements to the house.

***Section 27: Repairs***

50. This section, with [schedule 4](#), puts the landlord under an obligation to ensure that the house is kept wind and watertight and reasonably fit for human habitation. It enables the tenant to have essential repairs done within a maximum time-scale, in line with regulations made by the Scottish Ministers. Secure tenants currently have this right under the [Secure Tenants \(Right to Repair\) \(Scotland\) Regulations 1994 \(SI 1994/1046\)](#). It also requires the landlord, before the tenancy begins, to inspect the house and identify any work necessary to ensure that the house is wind and watertight and in all other respects reasonable fit for human habitation and to notify the tenant of any such work. The landlord must also carry out any necessary work within a reasonable timescale and make good any damage caused in carrying out the work. The landlord or someone authorised by the landlord can also enter the tenant's home on 24 hours notice to inspect the house and carry out any necessary work.

***Section 28: Landlord's consent to work***

51. This section and *Part 1 of [schedule 5](#)* require a tenant to get the written consent of the landlord to undertaking any work, other than interior decoration, on a house. The landlord must not unreasonably withhold its consent, but can set any reasonable conditions with respect to the work, including any standards that the work must meet. The Scottish Ministers may give guidance to landlords on such conditions or standards of work. *Part 1 of [schedule 5](#)* includes provision for a tenant to appeal against either a refusal by a landlord to allow a tenant to undertake work, or against a particular condition imposed by the landlord.

***Section 29: Reimbursement of cost of work***

52. This section applies when a Scottish secure tenancy comes to an end. Where a tenant has carried out improvement work to the house, with the consent of the landlord, the landlord can make a payment to the tenant, or his representative, up to the cost of the improvement work, after deducting the amount of any grant paid by a local authority through a repairs or improvements grant (a “grant paid or payable under Part XIII of the 1987 Act”).

***Section 30: Right to compensation for improvements***

53. This section sets out the detailed arrangements to support a tenant's entitlement under the right to compensation for improvement. Where the tenant has carried out certain improvement works with the consent of the landlord they are entitled to be compensated for the cost of those works when the tenancy comes to an end. The Scottish Ministers can make regulations prescribing:

- those works which qualify for compensation;
  - certain circumstances in which compensation is not payable;
  - minimum and maximum levels of compensation;
  - the procedures to be followed, and the factors to be taken into account, when claiming for or determining compensation.
54. Regulations in respect of these matters already exist for secure tenancies in the [Secure Tenants \(Compensation for Improvements\) \(Scotland\) Regulations 1994 \(SI 1994/632\)](#).

### ***Section 31: Effect of work on rent***

55. This section prevents a landlord increasing the rent of a tenant, the successor to the tenancy or the successor's spouse or cohabitee to reflect any increase in the value or amenities of the house arising from improvement works undertaken and agreed with the landlord by that tenant.

### ***Section 32: Assignment, subletting etc.***

56. This section entitles a tenant to assign or sublet their house or to take in a lodger with the consent of the landlord. In the case of an assignment, the house must have been the assignee's only or principal home for 6 months prior to application for consent to assign. The landlord's consent may only be withheld if there are reasonable grounds to do so; *subsection (3)* sets out examples of what such grounds might be. Those grounds can be modified by the Scottish Ministers by order. *Part 2 of schedule 5* provides, among other things, a right of appeal to the court by a tenant whose landlord refuses consent. Where the landlord is a registered social landlord which is a co-operative housing association any consent is subject to the condition that assignee, subtenant, or other person is a member of the association when the assignment or sublease takes effect or when possession is given to the other person.

### ***Section 33: Exchange of house***

57. This section provides a tenant with a right to exchange their house with another tenant, providing that both tenants are Scottish secure tenants and that the landlords of both tenants have given their consent. Such consent may only be refused if there are reasonable grounds to do so; *subsection (3)* sets out examples of what such grounds might be. Those grounds can be modified by order of the Scottish Ministers. *Part 2 of schedule 5* provides, among other things, a right of appeal to the court by a tenant whose landlord refuses consent. Where the landlord is a registered social landlord which is a co-operative housing association any consent is subject to the condition that the tenant of the other house is a member of the association when the exchange takes effect.

### ***Section 34: Short Scottish secure tenancies***

58. This section and *schedule 6* set out the arrangements for a new short form of tenancy in the social rented sector to be called a short Scottish secure tenancy. *Subsection (1)* sets out the basic conditions for this type of tenancy to apply, and requires the serving of a notice by the landlord on the prospective tenant that this type of tenancy will be offered. *Schedule 6* sets out a range of circumstances in which a landlord can offer a short tenancy: these include where prospective tenants have previously been evicted for anti-social behaviour; where prospective tenants or others who will reside with the tenant have had an anti-social behaviour order taken out against them; temporary lettings; and properties leased by the landlord from another body. The Scottish Ministers under *subsection (3)* may modify this list by order. *Subsection (7)* requires landlords to provide such housing support services as it considers appropriate to enable the tenancy to convert to a Scottish secure tenancy and *subsection (8)* enables Scottish Ministers to issue guidance as to the housing support services which are appropriate.



59. A short Scottish secure tenancy will be for a term of not less than 6 months and on its expiry may continue by tacit relocation (i.e. it will automatically be renewed for the same length of time), or by express agreement between landlord and tenant. *Subsection (6)* sets out the terms of a short Scottish secure tenancy and indicates that terms of a Scottish secure tenancy will apply with the exception of section 11(2) and (4) (which apply to existing tenancies which become Scottish secure tenancies); schedule 1 (tenancies which cannot be Scottish secure tenancies); section 12 (relating to termination of tenancy); and succession rights under section 22 and *schedule 3*. As a short Scottish secure tenancy is not included in the definition of a Scottish secure tenancy (section 111), the right to buy provisions do not apply to it. Provisions relating to tenant participation apply by virtue of sections 53 and 54.

### ***Section 35: Conversion to short Scottish secure tenancy***

60. This section entitles a landlord to serve a notice converting a Scottish secure tenancy to a short Scottish secure tenancy where an anti-social behaviour order has been taken out against the tenant or a member of the tenant's household. The notice must specify the tenant or other person who is subject to the anti-social behaviour order.
61. *Subsection (5)* gives a tenant a right of recourse to the court where the tenant is aggrieved by a landlord converting a Scottish secure tenancy to a short Scottish secure tenancy. Where the court finds in favour of the tenant it can effectively reinstate the Scottish secure tenancy.

### ***Section 36: Recovery of possession***

62. This section sets out the arrangements under which a landlord may recover possession of a short Scottish secure tenancy. *Subsections (2) to (4)* set out the arrangements in more detail including the service of a notice and raising of proceedings. *Subsection (5)* outlines the circumstances when a court must make an order for recovery of possession: where the tenancy has reached its term, tacit relocation is not operating (i.e. it will not be automatically renewed for the same length of time) and no further contractual tenancy has been entered into, and where a notice has been served.

### ***Section 37: Conversion to Scottish secure tenancy***

63. Where a tenant has been granted a short Scottish secure tenancy because they have previously been evicted from a tenancy for anti-social behaviour or because an anti-social behaviour order has been taken out against the tenant or one of the tenant's household this section provides for the automatic conversion of the short tenancy to a full Scottish secure tenancy after a period of 12 months, unless the landlord has served a notice to quit on the tenant. *Subsections (2) and (3)* make further provisions for cases where a landlord has served such a notice to quit. There is no such automatic conversion for tenants who have been granted a short tenancy on other grounds.

### ***Section 38: Appeals***

64. This provision establishes a right of appeal to the courts against a decision of a landlord not to offer either a Scottish secure tenancy or a short Scottish secure tenancy.

### ***Section 39: Application of sections 23 to 33 to other tenancies***

65. This section applies the rights and obligations of the Scottish secure tenancy to a tenancy which would be a Scottish secure tenancy if it were not tied accommodation or part of a building which is primarily for non-housing use. The key provisions of the Scottish secure tenancy which do not apply to such tenancies relate to termination of the tenancy and repossession of the house; to joint tenancies; to succession rights; to the right to buy; and to the tenant participation provisions.

**Sections 40 and 41: Notices and interpretation of *Chapter 1***

66. These sections clarify what is meant by certain terms used in this Chapter of the Act.

***Chapter 2 – Right to Buy***

67. This Chapter amends existing provisions on right to buy in the 1987 Act and inserts some new provisions. In general, tenants who currently have the right to buy will continue to do so on existing terms until their tenancy comes to an end. However the rent to mortgage scheme, lender of last resort and fixed price option provisions are repealed, although transitional provisions allow for protection for those currently benefiting from those provisions. The Chapter extends the right to buy to all tenants with a Scottish secure tenancy subject to a number of exemptions in certain specified circumstances. Tenants who did not previously have the right to buy, and all tenants entering into new tenancies, will have the right to buy on the revised terms provided for in this Chapter.

***Section 42: The qualifying conditions***

68. The amendment made by *subsection (1)(a)* ensures that a tenant's right to buy is preserved if there is a change in their landlord or the status of their landlord after the tenancy is granted.
69. Before being entitled to exercise their right to buy a tenant has to have lived in accommodation rented from a relevant landlord for a certain period of time. That period is currently 2 years; *subsection 1(b)* extends that to 5 years.
70. *Subsection (2)* further amends the existing provisions to require tenants to have been in continuous occupation of the property during the qualifying period. However, *subsection (2)(c)* allows for this requirement to be disregarded for circumstances outwith the control of the tenant, subject to the discretion of the landlord.

***Section 43: Exemptions from right to buy***

71. This section amends the range of circumstances under which the right to buy cannot be exercised.
72. *Subsection (2)* repeals the existing provisions relating to specialist and group housing. These are replaced by a single exemption at *subsection (6)* for groups of houses designed for persons with special needs with or situated near special facilities, or where tenants are in receipt of housing support. *Subsection (2)* also ends the current exemption under section 61(4)(b) of the 1987 Act for registered housing associations which have not received public subsidy.
73. *Subsection (4)* confirms the exemption from right to buy of properties which are part of a co-operative housing association and *subsection (5)* amends the exemption for some charitable housing associations. Any registered social landlord which is a Scottish charity on the date when the Housing (Scotland) Act 2001 received Royal Assent will be exempt from the right to buy.

***Section 44: Limitation on right to buy: registered social landlords***

74. This section inserts a new section 61A into the 1987 Act suspending the right to buy for tenants of a registered social landlord. This is intended to ensure that registered social landlords have time to adjust to the new arrangements. *Subsection (3)* of the new section sets a time period for this suspension of 10 years from the date on which the tenancies of the landlord must be Scottish secure tenancies by virtue of an order under section 11(1).
75. *Subsection (4)* of the new section gives powers to the Scottish Ministers to extend this suspension for a further period or periods as they see fit, subject to a maximum of 10 years for each further period. *Subsections (7) to (9)* set out the arrangements whereby registered social landlords can end this suspension on a voluntary basis.



76. *Subsection (2)* of the new section sets out the tenancies which are not included in this suspension. These are tenancies:
- of properties acquired by the landlord after the date when the landlord becomes subject to the Act's provisions on Scottish secure tenancies by virtue of an order under section 11(1);
  - of properties built after that date where a grant was offered to the landlord;
77. There is a power for the Scottish Ministers to specify further exemptions by order.

***Section 45: Limitation on right to buy: pressured areas***

78. This section inserts two new sections into the 1987 Act. The new section 61B allows the Scottish Ministers to designate particular areas as pressured areas for a period of up to 5 years. Any tenancy granted in a pressured area since the introduction of the Scottish secure tenancy or which did not previously have the right to buy, is exempt from the right to buy for the period of the designation.
79. *Subsection (1)* of the new section specifies that before being designated as pressured an area must meet two criteria: first, the availability of housing provided by the local authority or registered social landlords must be, or be likely to be, substantially less than the need in that area, and second, the exercise of the right to buy in that area must be likely to make that shortage worse. *Subsections (8) and (9)* provide for a designation to be amended or revoked by the Scottish Ministers; and to be extended for a further period or periods of up to 5 years each.
80. The new section 61C sets out the procedure for designating a pressured area: the proposal must be put forward by a local authority (see section 61B(1)) after local consultation, and the Scottish Ministers can set out in guidance the form of the proposal and the information it should include.

***Section 46: Limitation on right to buy: arrears of rent, council tax, etc.***

81. This section inserts two new provisions into the 1987 Act. *Subsection (1)* inserts section 61D which entitles the landlord to refuse an application under the right to buy from a tenant or joint purchaser who has arrears of rent or other charges, of council tax, or of water and sewerage charges. Slightly different provisions apply in each of these three cases to reflect the differences in the bodies to which the arrears may be due.
82. *Subsection (2)* amends section 63 of the 1987 Act to require a tenant of a registered social landlord who has applied to exercise their right to buy to provide a certificate from the local authority stating whether or not they have any arrears of council tax or water or sewerage charge, and if so the amount of these arrears. The local authority is required to issue such a certificate free of charge and within a specified time.

***Section 47: Limitation on right to buy: conduct***

83. This section inserts a new section 61E into the 1987 Act which suspends the right to buy from any person whose house is being repossessed on one of the conduct grounds in paragraphs 1 to 7 of [schedule 2](#) to the Act.

***Section 48: Houses liable to demolition***

84. This section inserts a new section into the 1987 Act. It provides the conditions and procedures required for a landlord to apply to Ministers for their consent for the landlord to refuse an application to buy on the grounds that the property is liable to demolition. Before granting such consent, Ministers will have regard in particular to how long before the landlord intends to demolish the house, and to what extent before deciding to demolish the landlord consulted the tenant about the proposal to demolish, and the effect of the proposal on the tenant's ability to exercise the right to buy.

#### **Section 49: Discounts**

85. Section 62 of the Housing (Scotland) Act 1987 sets out provisions for calculating the price at which a property should be sold under the right to buy. This section amends those provisions in the following ways for new Scottish secure tenants. (The existing provisions will continue to apply to tenants who currently have the right to buy by virtue of an order made under section 11(1)).
86. *Subsection (2)* changes the level of discount to be applied to the market value of the house. It removes the distinction between houses and flats. It sets a new minimum discount of 20% for all those with a 5 year eligibility period. It sets a single rate at which the level of discount increases from the minimum, of 1% of the market value for every year beyond 5 years that the tenant has occupied a house let by a relevant landlord. It reduces the maximum level of discount from 60% of the market value of the house to 35% or £15,000, whichever is the less.
87. In calculating a discount, section 62 of the 1987 Act requires account to be taken of any previous discounts received by the applicant(s). *Subsection (4)* inserts a new provision in section 62 making clear that a previous discount received by two or more persons jointly should be deemed to have been received in equal proportions.
88. *Subsection (3)* broadens the definition of appropriate persons for calculation purposes of any previous discount to be deducted from discount entitlement. The definition in section 62(4)(a)(i) to (iv) of the 1987 Act refers to the tenant, the tenant's spouse, or joint tenant. These will now reflect cohabitants of either sex, by virtue of section 108. *Subsection (5)* makes technical changes consequential to the changes made by *subsections (2)* and *(3)*.
89. *Subsections (6), (7) and (8)* allow the Scottish Ministers to vary the discount rates and set different discount regimes, including different caps, in different areas of the country by order.

#### **Section 50: Assistance to tenants to obtain other accommodation**

90. This section amends section 66 of the Housing (Scotland) Act 1988 to allow a local authority (with the approval of the Scottish Ministers) to establish a grant scheme to enable Scottish secure tenants of councils and registered social landlords to buy or extend a house, or to buy land and build a house. That section already allows such a scheme to include provisions for determining which tenants could qualify for grant assistance; *subsection (3)* inserts a new subsection to make clear that such provisions may in particular specify tenants in pressured areas as qualifying tenants. *Subsection (2)* extends the scope of these schemes so that grants can be paid to tenants of registered social landlords.

#### **Section 51: Right to buy: miscellaneous repeals**

91. This section abolishes the rent to loan scheme and removes the duty of the local authority to act as lender of last resort to tenants who wish to exercise the right to buy but are unable to raise the necessary finance elsewhere. The repeal of section 69(1A) removes the cut-off date which currently limits the scope for refusing the right to buy for certain houses provided for elderly persons and first let before 1 January 1990. A landlord subject to the right to buy can apply to the Scottish Ministers to refuse an application under the right to buy for any house which has been designed or adapted for special needs purposes.

#### **Section 52: Reports on right to buy**

92. This section places a duty on Scottish Ministers to provide reports on the effects and take-up of the right to buy.

### ***Chapter 3 – Tenant Participation***

#### ***Section 53: Tenant participation***

93. This section requires local authorities and registered social landlords to have tenant participation strategies in place as directed by the Scottish Ministers. It also places a duty on them to maintain a register of tenants groups meeting certain criteria. *Subsection (4)* entitles Scottish Ministers to make an order setting out the criteria for registration or removal from the register and the procedures to be followed in relation to such registration and removal and *subsection (5)* provides a right of appeal for such groups in relation to registration and deregistration.

#### ***Section 54: Consultation with tenants and registered tenant organisations***

94. This section enables both individual tenants and registered tenants groups to be consulted by the landlord on issues affecting them. *Subsection (1)* requires the landlord to have regard to representations by tenants or tenants groups, made within a reasonable timescale. *Subsection (2)* sets out the relevant proposals to which this applies.

#### ***Section 55: Tenant management agreements***

95. This section replaces the existing provisions of sections 22 and 22A of the 1987 Act and sets out arrangements for a tenant management co-operative to enter into an agreement with a local authority landlord, a registered social landlord or a water or sewerage authority to manage the landlord's houses. The Scottish Ministers must approve such management bodies and the terms of the agreement between the landlord and the co-operative. There is a right of appeal to Ministers in the case of an inability to agree terms or a refusal by the landlord to enter into an agreement.

#### ***Section 56: Tenant management agreements: further provision***

96. This section defines the range of functions which a landlord may make subject to a tenant management agreement. *Subsections (4) and (5)* make clear that a local authority's houses which are the subject of a tenant management agreement are still to be treated as the authority's houses for the purposes of the authority's Housing Revenue Account and related financial support from the Executive.