



Housing (Scotland) Act 2001

2001 asp 10

PART 2

TENANTS OF SOCIAL LANDLORDS

CHAPTER 2

RIGHT TO BUY

42 The qualifying conditions

- (1) In subsection (2) of section 61 (qualifying conditions for right to buy) of the 1987 Act—
 - (a) in paragraph (a), after “is” insert “, or was when the tenancy was granted,”,
 - (b) in paragraph (c), for “2 years” substitute “5 years”.
- (2) In subsection (10) of that section—
 - (a) for “the following section” substitute “section 62”,
 - (b) in paragraph (a), after “house” in the first place where it occurs insert “are to continuous occupation and”,
 - (c) in paragraph (b), after sub-paragraph (iii) insert—
 - “(iv) the landlord may, if it thinks fit, disregard as not affecting continuity any interruption in occupation which appears to it to result from circumstances outwith the control of the person in question.”

43 Exemptions from right to buy

- (1) Section 61(4) (exemptions from right to buy) of the 1987 Act is amended as follows.
- (2) Paragraphs (a), (b), (d) and (f) are repealed.
- (3) In paragraph (c), for “such a landlord” substitute “a landlord which is a registered social landlord”.
- (4) After paragraph (c) insert—

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“(ca) where a landlord which is a registered social landlord is a co-operative housing association;”.

(5) For paragraph (e) substitute—

“(e) where a registered social landlord is registered as such by virtue of section 57(2) of the Housing (Scotland) Act 2001 (asp 10) and was, on the date on which that Act received Royal Assent, a recognised body within the meaning of section 1(7) (Scottish charities) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);”.

(6) After paragraph (e) insert—

“(ea) to a house that is one of a group of houses which has been designed for persons with special needs where one or more of the following conditions is satisfied—

- (i) the houses are provided with, or situated near, special facilities for use by their tenants (whether or not exclusively),
- (ii) the tenants of the houses are provided with housing support services (within the meaning of section 91 of the Housing (Scotland) Act 2001 (asp 10)).”

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

After section 61 of the 1987 Act insert—

“61A Limitation on right to purchase from registered social landlords

- (1) Subject to subsection (2), this section applies to a Scottish secure tenancy where the landlord is a registered social landlord and—
 - (a) the tenancy was created on or after the date specified in relation to the landlord in an order under section 11(1) of the Housing (Scotland) Act 2001 (asp 10), or
 - (b) the tenancy became a Scottish secure tenancy by virtue of such an order.
- (2) This section does not apply—
 - (a) to a tenancy of a house acquired by the landlord after the date referred to in subsection (1)(a),
 - (b) to a tenancy of a house constructed by the landlord after that date if an offer of grant in connection with the construction was made by the Scottish Ministers or a local authority after that date,
 - (c) in such other circumstances as the Scottish Ministers may specify by order made by statutory instrument.
- (3) Where this section applies, section 61(1) does not apply in relation to a house let under the tenancy until the expiry of—
 - (a) the period of 10 years beginning with the date referred to in subsection (1)(a), and
 - (b) any further period determined under subsection (4).
- (4) The Scottish Ministers may if they think fit, on an application made by the landlord before the expiry of a period mentioned in subsection (3)(a) or

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- (b), determine a further period, not exceeding 10 years, for the purposes of paragraph (b) of that subsection.
- (5) The Scottish Ministers may issue guidance as to—
 - (a) the form of such an application,
 - (b) the information to be provided by the landlord in support of such an application.
- (6) Before making an application under subsection (4), the landlord shall consult—
 - (a) any heritable creditor of the landlord having an interest in a house of the landlord's in relation to which this section applies, and
 - (b) such other persons as it thinks fit.
- (7) If a registered social landlord so elects by notice in writing to the Scottish Ministers, subsection (3) ceases, on the date specified in the notice, to have effect in relation to houses let (whether before or after that date) by the landlord.
- (8) A notice given under subsection (7) cannot be withdrawn after the date specified in it.
- (9) Where a landlord gives a notice under subsection (7) it shall take such steps as are reasonable to inform—
 - (a) those of its tenants affected by the operation of subsection (3), and
 - (b) any heritable creditor referred to in subsection (6)(a),that the notice has been given and of its effect.
- (10) A statutory instrument containing an order under subsection (2)(c) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

45 Limitation on right to buy: pressured areas

After section 61A of the 1987 Act insert—

“61B Limitation on right to purchase: pressured areas

- (1) The Scottish Ministers may, from time to time, on a proposal from a local authority, designate any part of the local authority's area as a pressured area if they consider that—
 - (a) the needs of that part for housing accommodation in houses provided by the authority or by registered social landlords exceed substantially, or are likely to exceed substantially, the amount of such housing accommodation which is, or is likely to be, available in that part, and
 - (b) the exercise by tenants of houses in that part of the right under section 61(1) to purchase such houses is likely to increase the extent by which such needs exceed the amount of such housing accommodation.
- (2) A designation under subsection (1)—
 - (a) may be in terms of the proposal or in such other terms as the Scottish Ministers think fit,
 - (b) has effect for such period, not exceeding 5 years, as the Scottish Ministers may specify.

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- (3) For so long as an area is designated as a pressured area, section 61(1) does not apply in relation to a house in the area—
- (a) let under a tenancy created on or after the date specified in relation to the landlord in an order under section 11(1) of the Housing (Scotland) Act 2001 (asp 10), or
 - (b) let under a tenancy created before that date where—
 - (i) the tenant did not, immediately before that date, have a right under section 61(1) to purchase the house, or
 - (ii) the tenant succeeded to the tenancy on or after that date.
- (4) In determining for the purposes of subsection (3)(b)(i) whether a tenant had a right to purchase a house, section 61(2)(c) is to be left out of account.
- (5) A designation under subsection (1) shall—
- (a) identify the pressured area,
 - (b) specify the date on which the designation takes effect, and
 - (c) specify the period for which it has effect.
- (6) The local authority shall take such steps as are reasonable to publicise—
- (a) a designation under subsection (1) and its effect,
 - (b) any amendment or revocation of such a designation under subsection (8) and its effect.
- (7) Where a local authority landlord or a registered social landlord offers a person a tenancy of a house in an area in relation to which, on the proposed commencement date of the tenancy, a designation under subsection (1) will be in force, the landlord shall inform the person of the designation and its effect.
- (8) A designation under subsection (1) may be amended or revoked by the Scottish Ministers at any time if the local authority propose that they should do so and provide reasons for that proposal sufficient to justify the amendment or revocation.
- (9) A local authority may make a further proposal under subsection (1) in relation to a part of their area despite a designation under that subsection being, or having been, in force in relation to that part.
- (10) Nothing in this section affects a notice to purchase served prior to the designation of an area as a pressured area.

61C Pressured area proposals: procedure

- (1) A proposal by a local authority under section 61B(1) shall specify—
- (a) the part of their area proposed for designation as a pressured area, and
 - (b) the period, not exceeding 5 years, for which it is proposed the designation should have effect.
- (2) The Scottish Ministers may issue guidance as to—
- (a) the form of such a proposal,
 - (b) the information to be provided by a local authority in support of such a proposal.

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- (3) Before making a proposal under section 61B(1) in relation to any part of their area a local authority shall consult—
- (a) every registered social landlord holding houses for housing purposes in the part in question, and
 - (b) such bodies representing the interests of tenants and other residents in that part, and such other persons, as the authority think fit.”

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

- (1) After section 61C of the 1987 Act insert—

“61D Limitation on right to purchase: arrears of rent, council tax etc.

- (1) Subsections (2) and (3) apply where a tenant serves on a landlord an application to purchase at a time when the tenant, or any joint purchaser (within the meaning of section 61(6))—
- (a) has not paid the landlord rent or any other charge lawfully due to the landlord under that or any other tenancy, or
 - (b) has not paid any sum lawfully due in respect of—
 - (i) council tax in respect of the house or any other house in the local government area in which the house is situated, or
 - (ii) water and sewerage charges in relation to the house or any other such house.
- (2) If the landlord is a local authority landlord, it is entitled (but not required) to serve on the tenant a notice of refusal under section 68.
- (3) If the landlord is a registered social landlord—
- (a) where the sum is a sum referred to in subsection (1)(a), the landlord is entitled (but not required) to serve such a notice on the tenant,
 - (b) where the sum is a sum referred to in subsection (1)(b), the landlord shall—
 - (i) consult the local authority for the area in which the house is situated, and
 - (ii) serve such a notice on the tenant unless the authority agree that such a notice should not be served.”
- (2) In section 63 (application to purchase and offer to sell) of that Act, after subsection (1) insert—
- “(1A) Where the landlord is a registered social landlord the tenant shall, when serving on the landlord the application to purchase, give the landlord a certificate issued by the local authority for the area in which the house is situated stating—
- (a) whether the tenant and any joint purchaser have, as at the date of the certificate (which must be no more than one month before the date of the application to purchase), paid the sums referred to in section 61D(1)(b), and
 - (b) if they have not, the amount of any such sum lawfully due by the tenant or, as the case may be, the joint purchaser as at the date of the certificate.

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(1B) A local authority shall, on the application of a tenant or joint purchaser referred to in subsection (1A), issue to that person free of charge a certificate as to the matters specified in paragraphs (a) and (b) of that subsection so far as relating to that person.

(1C) A certificate under subsection (1B) shall be issued not later than 21 days after the receipt of the application by the authority.”

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

After section 61D of the 1987 Act insert—

“61E Limitation on right to purchase: conduct

(1) Subsection (3) applies where—

- (a) the landlord has served on the tenant a notice under section 14(2) of the Housing (Scotland) Act 2001 (asp 10) specifying a ground set out in any of paragraphs 1 to 7 of schedule 2 to that Act as the ground on which proceedings for recovery of possession of the house are to be raised, and
- (b) neither of the following has occurred—
 - (i) the notice has ceased to be in force in accordance with section 14(5) of that Act or has been withdrawn by the landlord without proceedings for recovery of possession having been raised, or
 - (ii) such proceedings have been raised and have been finally determined.

(2) For the purposes of subsection (1)(b)(ii) proceedings are finally determined when—

- (a) the period for appealing against the interlocutor disposing of the proceedings has expired without an appeal being lodged, or
- (b) where an appeal has been lodged, the appeal is withdrawn or finally determined.

(3) Where this subsection applies, section 61(1) does not apply in relation to the house referred to in subsection (1) of this section.

(4) Nothing in this section affects an application to purchase served prior to service of the notice referred to in subsection (1).”

48 **Houses liable to demolition**

After section 70 of the 1987 Act insert—

“Houses liable to demolition

70A Authorisation of refusal to sell houses liable to demolition

(1) Where—

Status: This is the original version (as it was originally enacted).

- (a) an application to purchase a house liable to demolition is served on a landlord, and
 - (b) it appears to the landlord that the tenant would, apart from this section, have a right under section 61 to purchase the house,
- the landlord may, within one month of service of the application to purchase, instead of serving an offer to sell on the tenant, apply to the Scottish Ministers for authority to serve a notice of refusal.
- (2) For the purposes of this section a house is liable to demolition if the landlord has made a decision to demolish the house.
 - (3) An application to the Scottish Ministers under subsection (1) shall be accompanied by such information in support of the application as the Scottish Ministers may prescribe by order made by statutory instrument.
 - (4) The Scottish Ministers may grant such an application if they consider it reasonable to do so in all the circumstances; and in deciding whether to grant the application they shall have regard in particular to—
 - (a) the period which is expected to elapse before the landlord demolishes the house in question; and
 - (b) the extent to which, before deciding to demolish the house, the landlord consulted the tenant about the proposal to demolish it and the effect of the proposal on the tenant’s right under section 61 to purchase it.
 - (5) Where the Scottish Ministers grant such an application the landlord shall serve on the tenant a notice of refusal under this section as soon as practicable, and in any event within one month of the granting of the application.
 - (6) Where the Scottish Ministers refuse such an application the landlord shall serve on the tenant an offer to sell under section 63(2) before—
 - (a) the expiry of the period of one month beginning with the refusal; or
 - (b) if later, the expiry of the period mentioned in that section.
 - (7) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

49 Discounts

- (1) Section 62 (the price) of the 1987 Act is amended as follows.
- (2) In subsection (3)—
 - (a) for paragraph (a) substitute—
 - “(a) 20 per cent of the market value of the house,”
 - (b) in paragraph (b), for the words from “or, where” to “beyond 2” substitute “of the market value for every year beyond 5”,
 - (c) for the words from “60 per cent” to the end substitute “35 per cent or £15,000, whichever is less”.
- (3) In subsection (3A)—
 - (a) for “the appropriate person” substitute “any of the persons mentioned in subsection (4)(a)(i) to (iv)”,
 - (b) the words “by any of these persons” are repealed.

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(4) After subsection (3A) insert—

“(3B) Where a previous discount was received by two or more persons jointly, subsection (3A) has effect as if each of them had received an equal proportion of the discount.”

(5) In subsection (4)—

- (a) in paragraph (a), for “such occupation” substitute “occupation of the type mentioned in subsection (3)(b)”,
- (b) the words from “and, for the purposes” to the end are repealed.

(6) In subsection (5)—

- (a) in paragraph (b), for “two” substitute “5”,
- (b) for “higher” substitute “other”.

(7) After subsection (5) insert—

“(5A) The Scottish Ministers may by order vary the maximum amount of discount for the time being specified in subsection (3).”

(8) In subsection (6)—

- (a) after “(5)” insert “or (5A)”,
- (b) in paragraph (a), after “case” insert “or different areas”.

50 Assistance to tenants to obtain other accommodation

(1) Section 66 (schemes for payments to assist local authority tenants to obtain other accommodation) of the 1988 Act is amended as follows.

(2) In subsection (1)—

- (a) after “authority” in the third place where it occurs insert “or of a registered social landlord under tenancies of houses situated in the area of the authority”,
- (b) for “either” substitute “or of a registered social landlord, by one or more of the following”,
- (c) after paragraph (a) insert “or
 - (aa) by acquiring an interest in land and building a house on the land,”
- (d) paragraph (c) and the preceding “or” are repealed.

(3) After subsection (2) insert—

“(2A) A provision of a scheme made in pursuance of subsection (2)(a) above may in particular specify, or provide for the determination of, persons as qualifying tenants by reference to the houses to which the tenancies relate being situated in an area designated as a pressured area under section 61B of the Housing (Scotland) Act 1987 (c. 26).”

(4) After subsection (5) insert—

“(5A) The Scottish Ministers may issue guidance as to the form and content of schemes made by local authorities under this section; and in considering whether to approve any such scheme, the Scottish Ministers shall have regard to the extent to which it complies with any such guidance.”

51 Right to buy: miscellaneous repeals

- (1) Sections 62A and 73A to 73D (rent to loan scheme) of the 1987 Act are repealed.
- (2) Section 69(1A) (limitation on power of the Scottish Ministers to authorise refusal to sell certain houses provided for persons of pensionable age) of that Act is repealed.
- (3) Section 216 (obligation of landlords to offer loans to certain tenants exercising right to purchase) of that Act is repealed.

52 Reports on right to buy

- (1) The Scottish Ministers—
 - (a) must, within 4 years of the coming into force of this section, and
 - (b) may, from time to time thereafter,prepare and publish a report on the matters set out in subsection (2).
- (2) Those matters are—
 - (a) the extent to which tenants have exercised their rights under Part III of the 1987 Act to purchase the houses which are the subject of the tenancies, and
 - (b) the effect of the exercise of those rights on—
 - (i) the nature and condition of the housing stock,
 - (ii) the needs of persons for housing accommodation, and
 - (iii) the demand for, and availability of, housing accommodation.