



Housing (Scotland) Act 2010

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PART 11

CHANGE OF LANDLORD: SECURE TENANTS

125 Right to acquire certain houses from local authority landlords

- (1) An approved person has the right to acquire an eligible house from a local authority landlord.
- (2) That right includes the right to acquire such other heritable property owned by the local authority landlord which will reasonably serve a beneficial purpose in connection with the occupation of that house (and references in this Part to “house” are to be construed accordingly).

126 Approved persons

- (1) The Regulator may approve any person (other than a local authority landlord) as a person who may exercise the right conferred by section 125.
- (2) An approval may be given generally or for particular persons, acquisitions, areas or purposes and different approvals may be given for different cases.
- (3) An approval may be given subject to conditions (for example, an approval may specify a maximum number of houses which the approved person may acquire).
- (4) The Regulator may vary or revoke an approval (but such a revocation or approval has no effect on transactions previously completed).

127 Eligible houses

- (1) An eligible house is a house (other than an exempt house) which is—
 - (a) owned by a local authority landlord, and
 - (b) occupied by a qualifying tenant.
- (2) A “qualifying tenant” is a tenant under a Scottish secure tenancy (other than a tenancy in respect of which an order for recovery of possession has been granted under section 16(2) of the Housing (Scotland) Act [2001 \(asp 10\)](#)).

Status: This is the original version (as it was originally enacted).

- (3) An exempt house is a house—
- (a) which is one of a group which has been provided with facilities (including a call system and the services of a warden) specially designed or adapted for the needs of persons of pensionable age or disabled persons,
 - (b) which has facilities which are substantially different from those of an ordinary house and has been designed or adapted for occupation by a person of pensionable age or a disabled person whose special needs require accommodation of the kind provided by the house, or
 - (c) which falls within subsection (4).
- (4) A house falls within this subsection if—
- (a) it is held by Orkney Islands Council, Shetland Islands Council or Comhairle nan Eilean Sar for the purposes of its functions as an education authority and is required for the accommodation of a person who is or will be employed by the council for those purposes, and
 - (b) the council concerned is not likely to be able reasonably to provide other suitable accommodation for that person.

128 Application to acquire eligible house

- (1) An approved person may make an application to a local authority landlord which—
- (a) states that the applicant seeks to acquire under this Part an eligible house owned by the local authority landlord, and
 - (b) is otherwise in such form as the Regulator may from time to time determine.
- (2) Such an application must be accompanied by the written agreement to an approach being made to the local authority landlord of—
- (a) the qualifying tenant occupying the eligible house (and in the case of a joint tenancy each qualifying tenant), and
 - (b) any spouse or civil partner of such a qualifying tenant, or any person living with such a qualifying tenant as if they were the tenant's spouse or civil partner, who occupies the house as an only or principal home.
- (3) The applicant must give a copy of the application to—
- (a) the Regulator, and
 - (b) each qualifying tenant.
- (4) An application ceases to have effect if, at any time before notice of acceptance of an offer to sell is given under section 132—
- (a) the applicant withdraws the application by giving notice of withdrawal to the local authority landlord and each qualifying tenant,
 - (b) a person whose agreement has been obtained for the purposes of subsection (2) withdraws that agreement by giving notice to the local authority landlord and the applicant, or
 - (c) the applicant is required to do anything under this Part within a certain period and that period (or that period as extended under section 136) expires without the applicant doing what is required,
- but this does not affect the applicant's right to make a further application.

129 Offer to sell

- (1) The local authority landlord must, within 2 months of an application being made under section 128—
 - (a) make an offer to sell the house to the applicant—
 - (i) at a price equal to the market value of house as determined in accordance with section 130, and
 - (ii) subject to conditions imposed in accordance with section 131, or
 - (b) refuse the application under section 133.
- (2) The local authority landlord must give a copy of an offer to sell to the qualifying tenant.

130 Market value of eligible house

- (1) It is for the local authority landlord to instruct either of the following to determine the market value of an eligible house—
 - (a) the district valuer, or
 - (b) a qualified valuer nominated by the local authority landlord and accepted by the applicant.
- (2) In determining the market value of an eligible house, the valuer must have regard to the price which the house would realise if sold on the open market by a willing seller, with the following assumptions—
 - (a) that it was sold on the day on which the application to acquire the house was made,
 - (b) that it was sold subject to the tenancy held by the qualifying tenant but otherwise with vacant possession,
 - (c) that it was to be conveyed with the same right and subject to the same burdens as would apply to an acquisition under this Part,
 - (d) that the only prospective acquirers were the persons who were approved persons on the date on which the application was made, and
 - (e) that the applicant would, within a reasonable period, carry out such works as are reasonably necessary to put the house into the state of repair required by the local authority landlord's repairing obligations.
- (3) Where a valuer determines that the house would not realise any price if offered for sale in accordance with subsection (2) that price may be taken to be—
 - (a) a negative value equal to the amount which would require to be paid to an approved person in order that the approved person would willingly acquire the house, or
 - (b) where an approved person would willingly acquire the house for no consideration, nil,and the house's market value may accordingly be determined to be a negative value or nil.
- (4) Where market value is determined to be a negative value or nil—
 - (a) the reference in section 129 to selling the house is to be read as a reference to disposing of it, and
 - (b) where the market value is determined to be a negative value, the obligation to pay falls on the local authority landlord.

131 Sale conditions

- (1) An offer to sell—
 - (a) must include such conditions as are needed to entitle the applicant to receive a good and marketable title to the house, and
 - (b) may be subject to such other conditions as are reasonable.
- (2) But such other conditions—
 - (a) must not reduce the tenant's enjoyment and use of the house as tenant of the applicant from that which the tenant had as tenant of the local authority landlord,
 - (b) must not require the applicant or the tenant to pay any of the local authority landlord's expenses, and
 - (c) must not impose a new charge, or increase an existing charge, for the provision of a service in relation to the house unless that charge is in reasonable proportion to the cost to the local authority landlord of providing the service.
- (3) An applicant who—
 - (a) considers that a condition contained in the offer to sell is unreasonable, or
 - (b) wishes to have a new condition included in the offer to sell,may request the local authority landlord to amend the offer to sell accordingly.
- (4) Such a request—
 - (a) is to be given by serving notice on the local authority landlord, and
 - (b) must be made within 1 month of the offer to sell being made.
- (5) The local authority landlord must, within 1 month of such a request being made—
 - (a) agree to the request and make an accordingly amended offer to sell to the applicant, or
 - (b) refuse the request by notifying the applicant accordingly.
- (6) If a local authority landlord—
 - (a) refuses a request, or
 - (b) fails to comply with subsection (5),the applicant may refer the matter to the Lands Tribunal.
- (7) Such a reference must be made within 1 month of the refusal or, as the case may be, of the expiry of the period referred to in subsection (5).
- (8) The Lands Tribunal may determine such a reference by—
 - (a) upholding a condition,
 - (b) striking out or modifying a condition, or
 - (c) inserting a new condition.
- (9) Where a Lands Tribunal determination results in a modification of the offer to sell, it must order the local authority landlord to make to the applicant an amended offer to sell (amended in accordance with the determination) within 2 months of the determination.

132 Acceptance of an offer to sell

- (1) An applicant may give the local authority landlord notice of acceptance of an offer to sell within 2 months of the latest of—

- (a) the date on which the offer to sell was made,
 - (b) the date on which an amended offer to sell (or, if there is more than one, the latest amended offer to sell) was made,
 - (c) the date of a determination by the Lands Tribunal under section 131(8) which does not require the local authority landlord to make an amended offer to sell.
- (2) If a notice of acceptance is not given within the period required by subsection (1) (or within that period as extended under section 136), both the offer to sell and the related application made under section 128 lapse.
- (3) A notice of acceptance is of no effect unless the qualifying tenant and the applicant have concluded a lease of the house for a period immediately subsequent to the acquisition of the house (being a lease which is conditional upon that acquisition proceeding).
- (4) Giving a notice of acceptance constitutes a contract of sale of the house between the local authority landlord and the applicant on the terms contained in the offer (or amended offer) to sell.

133 Refusal of application

- (1) A local authority landlord may refuse an application made under section 128 (by giving notice of refusal to the applicant) where it—
- (a) disputes the applicant’s right to acquire under this Part, or
 - (b) considers after reasonable inquiry (including giving the applicant a reasonable opportunity to amend the application) that any information in the application is materially incorrect.
- (2) A notice of refusal must—
- (a) specify the grounds of the dispute or, as the case may be, the information considered to be materially incorrect, and
 - (b) must be given—
 - (i) where given under subsection (1)(a), within 1 month of the date on which the application was made, and
 - (ii) where given under subsection (1)(b), within 2 months of that date.
- (3) The applicant may, within 1 month of a notice of refusal being given, refer the matter to the Lands Tribunal for a finding that the applicant is entitled to exercise the right conferred by this Part on such terms as it may determine.

134 Reference to Lands Tribunal

- (1) Where a local authority landlord—
- (a) fails to comply with section 129(1),
 - (b) fails to comply with an order made under section 131(9), or
 - (c) fails to progress an application in accordance with any finding under section 133(3) within 2 months of that finding being made,
- the applicant may refer the matter to the Lands Tribunal.
- (2) The Lands Tribunal may, if it finds that any of paragraphs (a) to (c) of subsection (1) apply, make an offer to sell to the applicant and do otherwise as the local authority landlord might do in pursuance of such an offer to sell.

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Anything done by the Lands Tribunal under this subsection has effect as if done by the local authority landlord.

- (3) Nothing in this section affects a provision in any other enactment relating to the enforcement of a statutory duty whether under that enactment or otherwise.

135 Consent for subsequent disposals

- (1) A person who acquires any property under this Part must not dispose of it unless the Regulator consents to the disposal.
- (2) The Regulator may—
- (a) give general consent to certain disposals, or
 - (b) give consent for particular purposes (for example, for particular persons, particular property or particular disposals).
- (3) The Regulator’s consent may be conditional.
- (4) Before consenting to a disposal, the Regulator must—
- (a) satisfy itself that the person who is seeking the consent has consulted—
 - (i) the tenants of houses included in the disposal, and
 - (ii) any other person whom the Regulator requires the person to consult, and
 - (b) have regard to the views expressed by those consulted.
- (5) This section does not apply to a disposal by a registered social landlord (such a disposal being subject to Part 9).

136 Extension of time periods

Any period during which a local authority landlord or an applicant may or must do anything under this Part may be extended (or further extended) by notice given before the end of the period by—

- (a) the applicant, where the thing is to be done by the local authority landlord, or
- (b) the local authority landlord, where the thing is to be done by the applicant.