



Housing (Scotland) Act 1987

1987 CHAPTER 26

PART III

RIGHTS OF PUBLIC SECTOR TENANTS

Security of tenure

44 Secure tenancies

- (1) Subject to subsection (4) and to section 45 and section 52(6), a tenancy (whenever created) of a house shall be a secure tenancy if—
 - (a) the house is let as a separate dwelling;
 - (b) the tenant is an individual and the house is his only or principal home; and
 - (c) the landlord is one of the bodies mentioned in subsection (2).
- (2) The bodies referred to in subsections (1)(c) and (7) are the bodies mentioned in section 61(2)(a) and any housing trust which was in existence on 13th November 1953.
- (3) Where a tenancy of a house is held jointly by two or more individuals, the requirements of subsection (1)(b) shall be deemed to be satisfied if all the joint tenants are individuals and at least one of the joint tenants occupies the house as his only or principal residence.
- (4) A tenancy shall not be a secure tenancy if it is a tenancy of a kind mentioned in Schedule 2.
- (5) Where the tenancy of a house is excluded from being a secure tenancy by reason only of the operation of paragraph 1 or 8 of Schedule 2, sections 53 to 60 shall nevertheless apply to that tenancy as if it were a secure tenancy.
- (6) A tenancy which has become a secure tenancy shall continue to be a secure tenancy notwithstanding that the requirements of subsection (1)(b) may have ceased to be fulfilled.

Status: This is the original version (as it was originally enacted).

- (7) Where a tenant under a secure tenancy is accommodated temporarily in another house of which the landlord is a body mentioned in subsection (2), while the house which he normally occupies is not available for occupation, the other house shall be deemed for the purposes of this Part, except sections 46 and 47, to be the house which he normally occupies.

45 Special provision for housing associations

- (1) A tenancy shall not be a secure tenancy at any time when the interest of the landlord belongs to a registered housing association which is a co-operative housing association.
- (2) Sections 44, 46 to 50, 51, 52, and 82 to 84 shall apply to a tenancy at any time when the interest of the landlord belongs to a housing association which is a co-operative housing association and is not registered.
- (3) If a registered housing association which is a registered co-operative housing association ceases to be registered, it shall notify those of its tenants who thereby become secure tenants.
- (4) Notice under subsection (3) shall be given in writing to each tenant concerned, within the period of 21 days beginning with the date on which the association ceases to be registered.
- (5) In this section—
- (a) references to registration in relation to a housing association are to registration under the Housing Associations Act 1985;
 - (b) "co-operative housing association" has the same meaning as in section 300(1)(b).

46 Restriction on termination of secure tenancy

- (1) Notwithstanding any provision contained in the tenancy agreement, a secure tenancy may not be brought to an end except—
- (a) by the death of the tenant (or, where there is more than one, of any of them), where there is no qualified person within the meaning of section 52;
 - (b) by operation of section 52(4) or (5);
 - (c) by written agreement between the landlord and the tenant;
 - (d) by operation of section 50(2);
 - (e) by an order for recovery of possession under section 48(2); or
 - (f) by 4 weeks' notice given by the tenant to the landlord.
- (2) If, while the house which the tenant under a secure tenancy normally occupies is not available for occupation, the tenant is accommodated temporarily in another house of which the landlord is a body mentioned in section 44(2), either—
- (a) by agreement; or
 - (b) following an order under section 48(2) (in a case where an order has also been made under subsection (5) of that section),
- the landlord shall not be entitled to bring the tenant's occupation of the other house to an end before the house which he normally occupies is available for occupation unless the secure tenancy has been brought to an end.

47 Proceedings for possession

- (1) The landlord under a secure tenancy may raise proceedings for recovery of possession of the house by way of summary cause in the sheriff court of the district in which it is situated.
- (2) Proceedings for recovery of possession of a house subject to a secure tenancy may not be raised unless—
 - (a) the landlord has served on the tenant a notice complying with subsection (3);
 - (b) the proceedings are raised on or after the date specified in the said notice; and
 - (c) the notice is in force at the time when the proceedings are raised.
- (3) A notice under this section shall be in a form prescribed by the Secretary of State by statutory instrument, and shall specify—
 - (a) the ground, being a ground set out in Part I of Schedule 3, on which proceedings for recovery of possession are to be raised; and
 - (b) a date, not earlier than 4 weeks from the date of service of the notice or the date on which the tenancy could have been brought to an end by a notice to quit had it not been a secure tenancy, whichever is later, on or after which the landlord may raise proceedings for recovery of possession.
- (4) A notice under this section shall cease to be in force 6 months after the date specified in it in accordance with subsection (3)(b), or when it is withdrawn by the landlord, whichever is earlier.

48 Powers of sheriff in proceedings

- (1) The court may, as it thinks fit, adjourn proceedings under section 47 on a ground set out in any of paragraphs 1 to 7 and 16 of Part I of Schedule 3 for a period or periods, with or without imposing conditions as to payment of outstanding rent or other conditions.
- (2) Subject to subsection (1), in proceedings under section 47 the court shall make an order for recovery of possession if it appears to the court that the landlord has a ground for recovery of possession, being—
 - (a) a ground set out in any of paragraphs 1 to 7 of that Part and specified in the notice required by section 47 and that it is reasonable to make the order; or
 - (b) a ground set out in any of paragraphs 8 to 15 of that Part and so specified and that other suitable accommodation will be available for the tenant when the order takes effect; or
 - (c) the ground set out in paragraph 16 of that Part and so specified and both that it is reasonable to make the order and that other suitable accommodation will be available as aforesaid.
- (3) Part II of Schedule 3 shall have effect to determine whether accommodation is suitable for the purposes of subsection (2)(b) or (c).
- (4) An order under subsection (2) shall appoint a date for recovery of possession and shall have the effect of—
 - (a) terminating the tenancy; and
 - (b) giving the landlord the right to recover possession of the house, at that date.

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

- (5) Where, in proceedings under section 47 on the ground set out in paragraph 10 of Part I of Schedule 3, it appears to the court that it is the intention of the landlord—
- (a) that substantial work will be carried out on the building (or a part of the building) which comprises or includes the house; and
 - (b) that the tenant should return to the house after the work is completed,
- the court shall make an order that the tenant shall be entitled to return to the house after the work is completed; and subsection (4)(a) shall not apply in such a case.

49 Rights of landlord where a secure tenancy appears to have been abandoned

- (1) This section shall have effect where a landlord who has let a house under a secure tenancy has reasonable grounds for believing that—
- (a) the house is unoccupied; and
 - (b) the tenant does not intend to occupy it as his home.
- (2) The landlord shall be entitled to enter the house at any time for the purpose of securing the house and any fittings, fixtures or furniture against vandalism.
- (3) For the purposes of subsection (2), the landlord and its servants or agents may open, by force if necessary, doors and lockfast places.
- (4) The landlord may take possession of the house in accordance with section 50.

50 Repossession

- (1) A landlord wishing to take possession of a house under section 49(4) shall serve on the tenant a notice—
- (a) stating that the landlord has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as his home;
 - (b) requiring the tenant to inform the landlord in writing within 4 weeks of service of the notice if he intends to occupy the house as his home; and
 - (c) informing the tenant that, if it appears to the landlord at the end of the said period of 4 weeks that the tenant does not intend so to occupy the house, the secure tenancy will be terminated forthwith.
- (2) Where the landlord has—
- (a) served on the tenant a notice which complies with subsection (1); and
 - (b) made such inquiries as may be necessary to satisfy the landlord that the house is unoccupied and that the tenant does not intend to occupy it as his home,
- and at the end of the period of 4 weeks mentioned in subsection (1)(c) is so satisfied, it may serve a further notice on the tenant bringing the tenancy to an end forthwith.
- (3) Where a tenancy has been terminated in accordance with this section the landlord shall be entitled to take possession of the house forthwith without any further proceedings.
- (4) The Secretary of State may by order made by statutory instrument make provision for the landlord to secure the safe custody and delivery to the tenant of any property which is found in a house to which this section applies, and in particular—
- (a) for requiring charges to be paid in respect of such property before it is delivered to the tenant; and

- (b) for authorising the disposal of such property, if the tenant has not arranged for its delivery to him before the expiry of such period as the order may specify, and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.

51 Tenant's right of recourse to sheriff

- (1) A tenant under a secure tenancy who is aggrieved by termination of the tenancy by the landlord under section 50(2) may raise proceedings by summary application within 6 months after the date of the termination in the sheriff court of the district in which the house is situated.
- (2) Where in proceedings under this section it appears to the sheriff that—
 - (a) the landlord has failed to comply with any provision of section 50; or
 - (b) the landlord did not have reasonable grounds for finding that the house was unoccupied, or did not have reasonable grounds for finding that the tenant did not intend to occupy it as his home; or
 - (c) the landlord was in error in finding that the tenant did not intend to occupy the house as his home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of his intention so to occupy it, he shall—
 - (i) where the house has not been let to a new tenant, make an order that the secure tenancy shall continue; or
 - (ii) in any other case, direct the landlord to make other suitable accommodation available to the tenant.
- (3) Part II of Schedule 3 to this Act shall have effect to determine whether accommodation is suitable for the purposes of subsection (2)(ii).

Succession

52 Succession to secure tenancy

- (1) On the death of a tenant under a secure tenancy, the tenancy shall pass by operation of law to a qualified person, unless—
 - (a) there is no qualified person, or the qualified person declines the tenancy under subsection (4); or
 - (b) the tenancy is terminated by operation of subsection (5).
- (2) For the purposes of this section, a qualified person is—
 - (a) a person whose only or principal home at the time of the tenant's death was the house and who was at that time either—
 - (i) the tenant's spouse; or
 - (ii) living with the tenant as husband and wife; and
 - (b) where the tenancy was held jointly by two or more individuals, a surviving tenant where the house was his only or principal home at the time of the tenant's death;
 - (c) where there is no person falling within paragraph (a) or (b), a member of the tenant's family who has attained the age of 16 years where the house was his only or principal home throughout the period of 12 months immediately preceding the tenant's death.

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

- (3) Where there is more than one qualified person, the benefit of the provisions of subsection (1) or, as the case may be, of subsection (6) shall accrue—
- (a) to such qualified person; or
 - (b) to such two or more qualified persons as joint tenants,
- as may be decided by agreement between all the qualified persons or, failing agreement within 4 weeks of the death of the tenant, as the landlord shall decide.
- (4) A qualified person who is entitled to the benefit of subsection (1) may decline the tenancy by giving the landlord notice in writing within 4 weeks of the tenant's death, and—
- (a) he shall vacate the house within 3 months thereafter;
 - (b) he shall be liable to pay rent which becomes due after the said death only in respect of any rental period (that is to say, a period in respect of which an instalment of rent falls to be paid) during any part of which he has occupied the house after the said death.
- (5) A secure tenancy which has passed under subsection (1) to a qualified person shall not, on the death of a tenant (or one of joint tenants) so pass on a second occasion, and accordingly the secure tenancy shall be terminated when such a death occurs; but the provisions of this subsection shall not operate so as to terminate the secure tenancy of any tenant under a joint tenancy where such a joint tenant continues to use the house as his only or principal home.
- (6) Where a secure tenancy is terminated by operation of subsection (5) and there is a qualified person, he shall be entitled to continue as tenant for a period not exceeding 6 months, but the tenancy shall cease to be a secure tenancy.
- (7) Where a tenant gives up a secure tenancy in order to occupy another house which is subject to a secure tenancy, whether by agreement or following termination of the first tenancy by an order under section 48(2)(b), for the purposes of subsections (2) and (5) those tenancies shall be treated as being a single secure tenancy.

Leases

53 Tenant's right to written lease

- (1) Every secure tenancy shall be constituted by writing which shall be probative or holograph of the parties.
- (2) It shall be the duty of the landlord under a secure tenancy to draw up the documents required to comply with subsection (1), to ensure that they are duly executed before the commencement of the tenancy and to supply a copy of the documents to the tenant.
- (3) A tenant shall not be required to pay any fees in respect of anything done under subsection (2).

54 Restriction on variation of terms of secure tenancies

- (1) Notwithstanding anything contained in the tenancy agreement, the terms of a secure tenancy may not be varied except—
 - (a) by agreement between the landlord and the tenant; or
 - (b) under subsection (2) or (4).

- (2) The rent or any other charge payable under a secure tenancy may, without the tenancy being terminated, and subject to section 58 of the Rent (Scotland) Act 1984, be increased with effect from the beginning of any rental period (that is to say, a period in respect of which an instalment of rent falls to be paid) by a written notice of increase given by the landlord to the tenant not less than 4 weeks before the beginning of the rental period (or any earlier day on which the payment of rent in respect of that period falls to be made).
- (3) Where—
- (a) a landlord wishes to vary the terms or conditions of a secure tenancy, but the tenant refuses or fails to agree the variation; or
 - (b) a tenant wishes to vary any term of a secure tenancy which restricts his use or enjoyment of the house, on the ground that—
 - (i) by reason of changes in the character of the house or of the neighbourhood or other circumstances which the sheriff may deem material, the term is or has become unreasonable or inappropriate; or
 - (ii) the term is unduly burdensome compared with any benefit which would result from its performance; or
 - (iii) the existence of the term impedes some reasonable use of the house, but the landlord refuses or fails to agree the variation,the landlord or, as the case may be, the tenant may raise proceedings by way of summary application in the sheriff court of the district in which the house is situated.
- (4) In proceedings under subsection (3), the sheriff may make such order varying any term of the tenancy (other than a term relating to the amount of rent or of any other charge payable by the tenant) as he thinks it reasonable to make in all the circumstances, having particular regard to the safety of any person and to any likelihood of damage to the house or to any premises of which it forms part, including if the sheriff thinks fit an order that the tenant shall pay to the landlord such sum as the sheriff thinks just to compensate him for any patrimonial loss occasioned by the variation; and such an order shall not have the effect of terminating the tenancy.
- (5) At any time before he grants an order in proceedings under subsection (3)(b), the sheriff may order the tenant to serve a copy of his application on any person who, in the capacity of owner or tenant of any land—
- (a) appears to the sheriff to benefit from the term of which variation is sought; or
 - (b) appears to him to be adversely affected by the proposed variation.
- (6) An agreement under subsection (1)(a) shall be in writing which is probative or holograph of the parties, and it shall be the duty of the landlord to draw up the said writing and to ensure that it is duly executed.

Subletting

55 No subletting by secure tenant without landlord's consent

- (1) It shall be a term of every secure tenancy that the tenant shall not assign, sublet or otherwise give up to another person possession of the house or any part thereof or take in a lodger except with the consent in writing of the landlord, which shall not be unreasonably withheld.

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

- (2) The landlord may refuse consent under this section if it appears to it that a payment other than—
- (a) a rent which is in its opinion a reasonable rent; or
 - (b) a deposit returnable at the termination of the assignation, subletting or other transaction given as security for the subtenant's obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the house or contents, which in its opinion is reasonable,
- has been or is to be received by the tenant in consideration of the assignation, subletting or other transaction.
- (3) This section shall not apply to any assignation, subletting or other transaction entered into before 3rd October 1980 provided that the consent of the landlord to the transaction and to the rent which is being charged has been obtained.
- (4) An assignation, subletting or other transaction to which this section applies shall not be a protected tenancy or a statutory tenancy within the meaning of the Rent (Scotland) Act 1984, nor shall Part VII of that Act apply to such an assignation, sublet or other transaction.
- (5) In this section and in section 56, "subtenant" means a person entitled to possession of a house or any part thereof under an assignation, subletting or other transaction to which this section applies, and includes a lodger.
- (6) The provisions of Schedule 4 shall have effect as terms of every secure tenancy.

56 Rent payable by subtenants

- (1) It shall be a term of every secure tenancy—
- (a) that the tenant shall notify the landlord of any proposed increase in a rent to which this section applies; and
 - (b) that no increase shall be made in a rent to which this section applies if the landlord objects.
- (2) Where a landlord under a secure tenancy has given consent to an assignation, subletting or other transaction under section 55, subsection (1) shall apply to the rent payable by the subtenant at the commencement of the assignation, subletting or other transaction.

Repairs and improvements

57 Landlord's consent to work

- (1) It shall be a term of every secure tenancy that the tenant shall not carry out work, other than interior decoration, in relation to the house without the consent in writing of the landlord, which shall not be unreasonably withheld.
- (2) In this section and in Schedule 5, "work" means—
- (a) alteration, improvement or enlargement of the house or of any fittings or fixtures;
 - (b) addition of new fittings or fixtures;
 - (c) erection of a garage, shed or other structure,
- but does not include repairs or maintenance of any of these.

- (3) The provisions of Schedule 5 shall have effect as terms of every secure tenancy.

58 Reimbursement of cost of work

- (1) On the termination of a secure tenancy, the landlord shall have the power (in addition to any other power which it has to make such payments) to make any payment to the tenant which it considers to be appropriate in respect of any work carried out by him (or by any predecessor of his as tenant under the same secure tenancy) with the consent of the landlord under section 57, which has materially added to the price which the house might be expected to fetch if sold on the open market.
- (2) The amount of any payment under subsection (1) shall not exceed the cost of the work in respect of which it is made, after deduction of the amount of any grant paid or payable under Part I of the Act of 1974 or under Part XIII.
- (3) Where a secure tenancy has been terminated (under section 46(1)(a)) by the death of the tenant, a payment under subsection (1) may be made to the tenant's personal representatives.

59 Effect of works on rent

No account shall be taken at any time in the assessment of rent to be payable under a secure tenancy by a tenant who has carried out work on the house or by a person who has succeeded him in the tenancy or by the spouse of such a person of any improvement in the value or amenities of the house resulting from the work carried out by the tenant.

60 Scheme giving tenant a right to carry out repairs

- (1) The Secretary of State may by regulations make a scheme entitling a tenant under a secure tenancy, subject to and in accordance with the provisions of the scheme—
- (a) to carry out to the house which is the subject of the secure tenancy repairs which the landlord is under an obligation to carry out; and
 - (b) after carrying out the repairs, to recover from the landlord such sums (not exceeding the costs that would have been incurred by the landlord in carrying out the repairs) as may be determined by or under the scheme.
- (2) Regulations under this section may make different provision with respect to different cases or descriptions of case and may make such procedural, incidental, supplementary or transitional provision as may appear to the Secretary of State to be necessary or expedient.
- (3) Without prejudice to the generality of subsection (2) regulations under this section—
- (a) may provide for any question arising under the scheme to be determined in such manner as the regulations may specify; and
 - (b) may provide that where a tenant under a secure tenancy makes application under the scheme, the obligations of the landlord in respect of repairs to the house shall cease to apply for such period and to such extent as may be determined by or under the scheme.
- (4) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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

Right to buy

61 Secure tenant's right to purchase

- (1) Notwithstanding anything contained in any agreement, a tenant of a house to which this section applies (or such one or more of joint tenants as may be agreed between them) shall, subject to this Part, have the right to purchase the house at a price fixed under section 62.
- (2) This section applies to every house let under a secure tenancy where—
 - (a) the landlord is either—
 - (i) an islands or district council, or a joint board or joint committee of an islands or district council or the common good of an islands or district council, or any trust under the control of an islands or district council; or
 - (ii) a regional council, or a joint board or joint committee of 2 or more regional councils, or any trust under the control of a regional council; or
 - (iii) a development corporation (including an urban development corporation); or
 - (iv) the Scottish Special Housing Association; or
 - (v) the Housing Corporation; or
 - (vi) a registered housing association; or
 - (vii) a housing co-operative; or
 - (viii) a police authority in Scotland; or
 - (ix) a fire authority in Scotland; and
 - (b) the landlord is the heritable proprietor of the house or, in the case of a landlord who is a housing co-operative, a body mentioned in paragraph (a)(i) is the heritable proprietor; and
 - (c) immediately prior to the date of service of an application to purchase, the tenant has been for not less than 2 years in occupation of a house (including accommodation provided as mentioned in subsection (11)(n)) or of a succession of houses provided by any persons mentioned in subsection (11).
- (3) This section also applies to a house let under a secure tenancy granted in pursuance of section 282(3) (grant of secure tenancy on acquisition of defective dwelling), if the tenant would not otherwise have the right to purchase under this Part; and where it so applies—
 - (a) paragraph (c) of subsection (2) shall not have effect;
 - (b) the words "beyond 2" in section 62(3)(b) shall not have effect.
- (4) This section does not apply—
 - (a) to a house that 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; or
 - (b) where a landlord which is a registered housing association has at no time received a grant under—
 - (i) any enactment mentioned in paragraph 2 of Schedule 1 to the Housing Associations Act 1985 (grants under enactments superseded by the Housing Act 1974);
 - (ii) section 31 of the Housing Act 1974 (management grants);

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

- (iii) section 41 of the Housing Associations Act 1985 (housing association grants);
 - (iv) section 54 of that Act (revenue deficit grants);
 - (v) section 55 of that Act (hostel deficit grants); or
 - (vi) section 59(2) of that Act (grants by local authorities); or
 - (c) where such a landlord has at no time let (or had available for letting) more than 100 dwellings; or
 - (d) where such a landlord is a charity—
 - (i) entered in the register of charities maintained under the Charities Act 1960 by the Charity Commissioners for England and Wales; or
 - (ii) which but for section 4(4) of, and paragraph (g) of the Second Schedule to, that Act (exempt charities) would require to be so entered; or
 - (e) where by virtue of section 49(2) of the said Act of 1960 (extent) such a landlord is not one to which Part II of that Act (registration of charities, etc.) applies, but—
 - (i) the landlord has, in respect of all periods from 14th November 1985 or from the date of first being registered by the Housing Corporation (whichever is the later) claimed and been granted (whether or not retrospectively), under section 360(1) of the Income and Corporation Taxes Act 1970 (special exemptions for charities), exemption from tax; and
 - (ii) where such exemption has not been claimed and granted in respect of all periods from the said date of registration, the rules of the landlord, registered under the Industrial and Provident Societies Act 1965 and in force at that date, were such as would have admitted of such exemption had it been claimed as at that date; or
 - (f) where, within a neighbourhood, the house is one of a number (not exceeding 14) of houses with a common landlord, being a landlord so mentioned, and it is the practice of that landlord to let at least one half of those houses for occupation by any or all of the following—
 - (i) persons who have suffered from, or are suffering from, mental disorder (as defined in the Mental Health (Scotland) Act 1984), physical handicap or addiction to alcohol or other drugs;
 - (ii) persons who have been released from prison or other institutions;
 - (iii) young persons who have left the care of a local authority,and a social service is, or special facilities are, provided wholly or partly for the purpose of assisting those persons.
- (5) Where the spouse of a tenant or, where there is a joint tenancy, the spouse of a joint tenant, occupies the house as his only or principal home but is not himself a joint tenant, the right to purchase the house under subsection (1) shall not be exercised without the consent of such spouse.
- (6) A tenant may exercise his right to purchase, if he so wishes, together with one or more members of his family acting as joint purchasers, provided—
 - (a) that such members are at least 18 years of age, that they have, during the period of 6 months ending with the date of service of the application to purchase, had their only or principal home with the tenant and that their residence in the house is not a breach of any obligation of the tenancy; or

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

- (b) where the requirements of paragraph (a) are not satisfied, the landlord has consented.
- (7) The Secretary of State may by order made by statutory instrument amend, or add to, the descriptions of persons set out in sub-paragraphs (i) to (iii) of paragraph (f) of subsection (4).
- (8) The Commissioners of Inland Revenue shall, as regards any registered housing association, at the request of the Secretary of State, provide him and the Housing Corporation with such information as will enable them to determine whether that association is a landlord in respect of which this section will not, by virtue of subsection (4)(d), apply; and where a registered housing association is refused exemption on a claim under section 360(1) of the Income and Corporation Taxes Act 1970 the Commissioners shall forthwith inform the Secretary of State and the Housing Corporation of that fact.
- (9) Where information has been received by the Housing Corporation under subsection (8) and having regard to that information the Corporation is satisfied that the housing association to which it relates is not a landlord in respect of which this section applies, they shall make an entry to that effect in the register of housing associations maintained by them under section 3(1) of the Housing Associations Act 1985; and they shall cancel that entry where subsequent information so received in relation to that housing association is inconsistent with their being so satisfied.
- (10) In this section and the following section—
- (a) references to occupation of a house include occupation—
- (i) in the case of joint tenants, by any one of them;
- (ii) by any person occupying the house rent-free;
- (iii) as the spouse of the tenant, joint tenant or of any such person;
- (iv) as the child, or the spouse of a child, of a tenant or a person occupying the house rent free who has succeeded, directly or indirectly, to the rights of that person in a house occupation of which would be reckonable for the purposes of this section; but only in relation to any period when the child, or as the case may be spouse of the child, is at least 16 years of age; or
- (v) in the discretion of the landlord, as a member of the family of a tenant or a person occupying the house rent free who, not being that person's spouse or child (or child's spouse), has succeeded, directly or indirectly, to such rights as are mentioned in paragraph (iv); but only in relation to any period when the member of the family is at least 16 years of age.
- (b) for the purpose of determining the period of occupation—
- (i) any interruption in occupation of 12 months or less shall be regarded as not affecting continuity; and
- (ii) any interruption in occupation of more than 12 months and less than 24 months may at the discretion of the landlord be regarded as not affecting continuity.
- (11) The persons providing houses referred to in subsection (2)(c) (occupation requirement for exercise of right to purchase) and in section 62(3)(b) (calculation of the discount from the market value) are—
- (a) a regional, islands or district council in Scotland; any local authority in England and Wales or in Northern Ireland; and the statutory predecessors of

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

- any such council or authority, or the common good of any such council, or any trust under the control of any such council;
- (b) the Commission for the New Towns;
 - (c) a development corporation, an urban development corporation; and any development corporation established under corresponding legislation in England and Wales or in Northern Ireland; and the statutory predecessors of any such authority;
 - (d) the Scottish Special Housing Association;
 - (e) a registered housing association;
 - (f) the Housing Corporation;
 - (g) a housing co-operative within the meaning of section 22 or a housing co-operative within the meaning of section 27B of the Housing Act 1985;
 - (h) the Development Board for Rural Wales;
 - (i) the Northern Ireland Housing Executive or any statutory predecessor;
 - (j) a police authority or (he statutory predecessors of any such authority;
 - (k) a fire authority or the statutory predecessors of any such authority;
 - (l) a water authority in Scotland; any water authority constituted under corresponding legislation in England and Wales or in Northern Ireland; and the statutory predecessors of any such authority;
 - (m) the Secretary of State, where the house was at the material time used for the purposes of the Scottish Prison Service or of a prison service for which the Home Office or the Northern Ireland Office have responsibility;
 - (n) the Crown, in relation to accommodation provided in connection with service whether by the tenant or his spouse as a member of the regular armed forces of the Crown;
 - (o) the Secretary of State, where the house was at the material time used for the purposes of a health board constituted under section 2 of the National Health Services (Scotland) Act 1978 or for the purposes of a corresponding board in England and Wales, or for the purposes of the statutory predecessors of any such board; or the Department of Health and Social Services for Northern Ireland, where the house was at the material time used for the purposes of a Health and Personal Services Board in Northern Ireland, or for the purposes of the statutory predecessors of any such board;
 - (p) the Secretary of State, or the Minister of Agriculture, Fisheries and Food, where the house was at the material time used for the purposes of the Forestry Commission;
 - (q) the Secretary of State, where the house was at the material time used for the purposes of a State Hospital provided by him under section 90 of the Mental Health (Scotland) Act 1984 or for the purposes of any hospital provided under corresponding legislation in England and Wales;
 - (r) the Commissioners of Northern Lighthouses;
 - (s) the Trinity House;
 - (t) the Secretary of State, where the house was at the material time used for the purposes of Her Majesty's Coastguard;
 - (u) the United Kingdom Atomic Energy Authority;
 - (v) the Secretary of State, where the house was at the material time used for the purposes of any function transferred to him under section 1(2) of the Defence (Transfer of Functions) Act 1964 or any function

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

relating to defence conferred on him by or under any subsequent enactment;

- (w) such other person as the Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament prescribe.

62 The price

- (1) Subject to subsections (7) and (8), the price at which a tenant shall be entitled to purchase a house under this Part shall be fixed by subtracting a discount from the market value of the house.
- (2) The market value for the purposes of this section shall be determined by—
- (a) a qualified valuer nominated by the landlord and accepted by the tenant; or
 - (b) the district valuer,
- as if the house were available for sale on the open market with vacant possession at the date of service of the application to purchase. For the purposes of this subsection, no account shall be taken of any element in the market value of the house which reflects an increase in value as a result of work the cost of which would qualify for a reimbursement under section 58.
- (3) Subject to subsection (5), the discount for the purposes of subsection (1) shall be—
- (a) 32 per cent. of the market value of the house except—
 - (i) where the house is a flat, it shall be 44 per cent. of the market value;
 - (ii) where the house is one to which section 61(3) applies, it shall be 30 per cent. or, where it is a flat, 40 per cent. of the market value;
 together with
 - (b) an additional one per cent. or, where the house is a flat, two per cent., of the market value for every year beyond 2 of continuous occupation by the appropriate person, immediately preceding the date of service of the application to purchase, of a house (including accommodation provided as mentioned in section 61(11)(n)) or of a succession of houses provided by any persons mentioned in section 61(11),
- up to a maximum discount of 60 per cent., or where the house is a flat, 70 per cent. of the market value.
- (4) For the purposes of subsection (3), the "appropriate person" is the tenant, or if it would result in a higher discount and if she is cohabiting with him at the date of service of the application to purchase, his spouse; and where joint tenants are joint purchasers the "appropriate person" shall be whichever tenant (or, as the case may be, spouse) has the longer or longest such occupation.
- (5) The Secretary of State may by order made with the consent of the Treasury provide that, in such cases as may be specified in the order—
- (a) the minimum percentage discount,
 - (b) the percentage increase for each complete year of the qualifying period after the first two, or
 - (c) the maximum percentage discount,
- shall be such percentage, higher than that specified in subsection (3), as may be specified in the order.
- (6) An order under subsection (5)—

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

- (a) may make different provision with respect to different cases or descriptions of case,
 - (b) may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient, and
 - (c) shall be made by statutory instrument and shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (7) Where the house was first let under a secure tenancy (or under a tenancy which, if this Part had then been in force, would have been a secure tenancy) after 31st December 1978, the price fixed under subsection (1) shall not be less than—
- (a) the outstanding debt incurred after that date (either or both)—
 - (i) in providing;
 - (ii) in making improvements (other than by way of repair or maintenance) to,
the house; or
 - (b) the market value of the house determined under subsection (2),
whichever is the lesser, except in such cases as the Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, with the consent of the Treasury, prescribe.
- (8) Where the house was first let under a tenancy which, if this Part had then been in force, would have been a secure tenancy, on or before the date mentioned in subsection (7) but an outstanding debt has been incurred after that date in making improvements (other than by way of repair or maintenance) to the house, the price fixed under subsection (1) shall not be less than—
- (a) that outstanding debt; or
 - (b) the market value of the house determined under subsection (2),
whichever is the lesser, except in such cases as the Secretary of State may, by order made as is mentioned in subsection (7), prescribe.
- (9) In subsections (7) and (8), "outstanding debt" means—
- (a) in relation to subsection (7)(a)(i), any undischarged debt arising from—
 - (i) the cost of the erection or acquisition of the house; together with
 - (ii) the cost of acquisition of the site of the house;
 - (iii) the cost of works of improvement, alteration, or major structural repair;
 - (iv) administrative costs attributable to the matters mentioned in subparagraphs (i) to (iii); and
 - (v) where the landlord is the Housing Corporation, or a registered housing association, any proportion of capital grants which it must repay on the house being sold;
 - (b) in relation to subsection (7)(a)(ii) and in subsection (8), any undischarged debt arising from the cost of works of improvement together with—
 - (i) administrative costs attributable to these works; and
 - (ii) any proportion of capital grants as mentioned in paragraph (a)(v) where the landlord is a body mentioned there.
- (10) Where at the date of service of an offer to sell under section 63 any of the costs referred to in subsection (9) are not known, the landlord shall make an estimate of such unknown costs for the purposes of that subsection.

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

- (11) The Secretary of State may, with the consent of the Treasury, by order—
- (a) substitute a later date in subsection (7);
 - (b) provide that subsections (7)(a)(ii), (8) and (9) shall apply subject to such modifications as may be specified in the order.
- (12) Any such order may—
- (a) make different provision in relation to different areas, cases or classes of case;
 - (b) exclude certain areas, cases or classes of case.
- (13) An order under subsection (11) shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Procedure

63 Application to purchase and offer to sell

- (1) A tenant who seeks to exercise a right to purchase a house under section 61 shall serve on the landlord a notice (referred to in this Part as an "application to purchase") which shall be in such form as the Secretary of State shall by order made by statutory instrument prescribe, and shall contain—
- (a) notice that the tenant seeks to exercise the right to purchase;
 - (b) a statement of any period of occupancy of a house on which the tenant intends to rely for the purposes of section 61 and 62; and
 - (c) the name of any joint purchaser within the meaning of section 61(6).
- (2) Where an application to purchase is served on a landlord, and the landlord does not serve a notice of refusal under sections 68 to 70 it shall, within 2 months after service of the application to purchase, serve on the tenant a notice (referred to in this Part as an "offer to sell") containing—
- (a) the market value of the house determined under section 62(2);
 - (b) the discount calculated under section 62(3);
 - (c) the price fixed under section 62(1);
 - (d) any conditions which the landlord intends to impose under section 64; and
 - (e) an offer to sell the house to the tenant and any joint purchaser named in the application to purchase at the price referred to in paragraph (c) and under the conditions referred to in paragraph (d).

64 Conditions of sale

- (1) Subject to section 75, an offer to sell under section 63(2) shall contain such conditions as are reasonable, provided that—
- (a) the conditions shall have the effect of ensuring that the tenant has as full enjoyment and use of the house as owner as he has had as tenant;
 - (b) the conditions shall secure to the tenant such additional rights as are necessary for his reasonable enjoyment and use of the house as owner (including, without prejudice to the foregoing generality, common rights in any part of the building of which the house forms part) and shall impose on the tenant any necessary duties relative to rights so secured; and
 - (c) the conditions shall include such terms as are necessary to entitle the tenant to receive a good and marketable title to the house,

- (2) A condition which imposes a new charge or an increase of an existing charge for the provision of a service in relation to the house shall provide for the charge to be in reasonable proportion to the cost to the landlord of providing the service.
- (3) No condition shall be imposed under this section which has the effect of requiring the tenant to pay any expenses of the landlord.
- (4) Subject to subsection (6), no condition shall be imposed under this section which has the effect of requiring the tenant or any of his successors in title to offer to the landlord, or to any other person, an option to purchase the house in advance of its sale to a third party, except in the case of a house which has facilities which are substantially different from those of an ordinary house and which has been designed or adapted for occupation by a person of pensionable age or disabled person whose special needs require accommodation of the kind provided by the house.
- (5) Where an option to purchase permitted under subsection (4) is exercised, the price to be paid for the house shall be determined by the district valuer who shall have regard to the market value of the house at the time of the purchase and to any amount due to the landlord under section 72 (recovery of discount on early re-sale).
- (6) Subsection (4) shall not apply to houses in an area which is designated a rural area by the islands or district council within whose area it is situated where the Secretary of State, on the application of the islands or district council concerned, makes an order, which shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, to that effect.
- (7) An order under subsection (6) may be made where—
 - (a) within the said rural area more than one-third of all relevant houses have been sold; and
 - (b) the Secretary of State is satisfied that an unreasonable proportion of the houses sold have been resold and are not being used as the only or principal home of the owner.
- (8) For the purposes of subsection (7)(a), a "relevant house" is one of which—
 - (a) at 3rd October 1980, the council concerned, or
 - (b) at 7th January 1987, a registered housing association,is landlord.
- (9) A condition imposed by virtue of subsection (6) shall not have effect in relation to any house for more than 10 years from the date of its conveyance to a tenant in pursuance of his right to purchase under this Part and subsection (5) shall apply to any option to purchase exercised under such a condition.

65 Variation of conditions

- (1) Where an offer to sell is served on a tenant and he wishes to exercise his right to purchase, but—
 - (a) he considers that a condition contained in the offer to sell is unreasonable; or
 - (b) he wishes to have a new condition included in it; or
 - (c) he has not previously notified the landlord of his intention to exercise that right together with a joint purchaser, but now wishes to do so; or

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

- (d) he has previously notified the landlord of his intention to exercise that right together with any joint purchaser but now wishes to exercise the right without that joint purchaser,

he may request the landlord to strike out or vary the condition, or to include the new condition, or to make the offer to sell to the tenant and the joint purchaser, or to withdraw the offer to sell in respect of the joint purchaser, as the case may be, by serving on the landlord within one month after service of the offer to sell a notice in writing setting out his request; and if the landlord agrees, it shall accordingly serve an amended offer to sell on the tenant within one month of service of the notice setting out the request.

- (2) A tenant who is aggrieved by the refusal of the landlord to agree to strike out or vary a condition, or to include a new condition, or to make the offer to sell to the tenant and the joint purchaser, or to withdraw the offer to sell in respect of any joint purchaser under subsection (1), or by his failure timeously to serve an amended offer to sell under the said subsection, may, within one month or, with the consent of the landlord given in writing before the expiry of the said period of one month, within two months of the refusal or failure, refer the matter to the Lands Tribunal for determination.
- (3) In proceedings under subsection (2), the Lands Tribunal may, as it thinks fit, uphold the condition or strike it out or vary it, or insert the new condition or order that the offer to sell be made to the tenant and the joint purchaser, or order that the offer to sell be withdrawn in respect of any joint purchaser, and where its determination results in a variation of the terms of the offer to sell, it shall order the landlord to serve on the tenant an amended offer to sell accordingly within 2 months thereafter.

66 Notice of acceptance

- (1) Where an offer to sell is served on a tenant and he wishes to exercise his right to purchase and—
- (a) he does not dispute the terms of the offer to sell by timeously serving a notice setting out a request under section 65(1) or by referring the matter to the Lands Tribunal under subsection (1)(d) of section 71; or
 - (b) any such dispute has been resolved;
- the tenant shall, subject to section 67(1), serve a notice of acceptance on the landlord within 2 months of whichever is the latest of—
- (i) the service on him of the offer to sell;
 - (ii) the service on him of an amended offer to sell (or if there is more than one, of the latest amended offer to sell);
 - (iii) a determination by the Lands Tribunal under section 65(3) which does not require service of an amended offer to sell;
 - (iv) a finding or determination of the Lands Tribunal in a matter referred to it under section 71(1)(d) where no order is made under section 71(2)(b);
 - (v) the service of an offer to sell on him by virtue of subsection (2)(b) of section 71;
 - (vi) where a loan application under subsection (2)(a)(i) of section 216 (loans) has been served on the landlord, the service of a relative offer or refusal of loan; or
 - (vii) where section 216(7) (loans) is invoked, the decision of the court.
- (2) Where an offer to sell (or an amended offer to sell) has been served on the tenant and a relative notice of acceptance has been duly served on the landlord, a contract of sale

of the house shall be constituted between the landlord and the tenant on the terms contained in the offer (or amended offer) to sell.

67 Fixed price option

- (1) Where an offer to sell (or an amended offer to sell) is served on a tenant, but he is unable by reason of the application of regulations made under section 216(3) (loans) to obtain a loan of the amount for which he has applied, he may, within 2 months of service on him of an offer of loan, or (as the case may be) of the date of a declarator by the sheriff under section 216(7) (loans), whichever is the later, serve on the landlord a notice to the effect that he wishes to have a fixed price option, which notice shall be accompanied by a payment to the landlord of £100, and in that event he shall be entitled to serve a notice of acceptance on the landlord at any time within 2 years of the service of the application to purchase:

Provided that where, as regards the house, the tenant has served a loan application in accordance with subsection (2)(a)(ii) of section 216 (loans), he shall be entitled (even if the said period of 2 years has expired) to serve a notice of acceptance on the landlord within 2 months of whichever is the later of—

- (a) the service of a relative offer, or refusal, of loan; or
 - (b) where section 216(7) is invoked, the decision of the court.
- (2) The payment of £100 mentioned in subsection (1) shall be recoverable—
- (a) by the tenant, when he purchases the house in accordance with that subsection or, if he does not, at the expiry of the period of 2 years mentioned therein;
 - (b) by the tenant, when the landlord recovers possession of the house under subsection (3); or
 - (c) by his personal representatives, if he dies without purchasing the house in accordance with that subsection.
- (3) The existence of a fixed price option under subsection (1) shall not prevent the landlord from recovering possession of the property in any manner which may be lawful, and in that event the option shall be terminated.

68 Refusal of applications

- (1) Where a landlord on which an application to purchase has been served disputes the tenant's right to purchase a house under section 61, it shall by notice (referred to in this Part as a "notice of refusal") served within one month after service of the application to purchase—
- (a) refuse the application; or
 - (b) offer to sell the house to the tenant under section 14, or under any other power which the landlord has to sell the house.
- (2) Where a landlord on which an application to purchase has been served, after reasonable enquiry (which shall include reasonable opportunity for the tenant to amend his application), is of the opinion that information contained in the application is incorrect in a material respect it shall issue a notice of refusal within 2 months of the application to purchase.
- (3) A notice of refusal shall specify the grounds on which the landlord disputes the tenant's right to purchase or, as the case may be, the accuracy of the information.

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

- (4) Where a landlord serves a notice of refusal on a tenant under this section, the tenant may within one month thereafter apply to the Lands Tribunal for a finding that he has a right to purchase the house under section 61 on such terms as it may determine.

Houses provided for special purposes

69 Secretary of State's power to authorise refusal to sell certain houses provided for persons of pensionable age

- (1) This section applies to a house which has facilities which are substantially different from those of an ordinary house and which has been designed or adapted for occupation by a person of pensionable age whose special needs require accommodation of the kind provided by the house.
- (2) Where an application to purchase a house is served on a landlord and it appears to the landlord that—
- (a) the house is one to which this section applies; and
 - (b) the tenant would, apart from this section, have a right under section 61 to purchase the house,
- the landlord may, within one month after service of the application to purchase, instead of serving an offer to sell on the tenant, make an application to the Secretary of State under this section.
- (3) An application under subsection (2) shall specify the facilities and features of design or adaptation which in the view of the landlord cause the house to be a house to which this section applies.
- (4) Where the Secretary of State has received an application under this section and it appears to him that the house concerned is one to which this section applies, he shall authorise the landlord to serve on the tenant a notice of refusal under this section, which shall be served as soon as is practicable after the authority is given and in any event within one month thereafter.
- (5) A notice of refusal served under subsection (4) shall specify the facilities and features specified for the purposes of subsection (3) and that the Secretary of State's authority for service of the said notice has been given.
- (6) Where the Secretary of State refuses an application made under subsection (2), the landlord shall serve on the tenant an offer to sell under section 63(2)—
- (a) within the period mentioned in that section; or
 - (b) where the unexpired portion of that period is less than one month or there is not an unexpired portion of that period, within one month of the Secretary of State's refusal.

70 Power to refuse to sell certain houses required for educational purposes

- (1) Where an application to purchase a house is served on an islands council as landlord and—
- (a) the house is—
 - (i) held by the council for the purposes of its functions as education authority; and

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

- (ii) required for the accommodation of a person who is or will be employed by the council for those purposes;
 - (b) the council is not likely to be able reasonably to provide other suitable accommodation for the person mentioned in paragraph (a)(ii); and
 - (c) 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, serve a notice of refusal on the tenant.
- (2) A refusal by the landlord under subsection (1) shall contain sufficient information to demonstrate that the conditions mentioned in paragraphs (a) and (b) of that subsection are fulfilled in relation to the house.

Lands Tribunal

71 Reference to Lands Tribunal

- (1) Where—
- (a) a landlord who has been duly served with an application to purchase fails to issue timeously either an offer to sell (even if only such offer to sell as is mentioned in paragraph (d)) or a notice of refusal; or
 - (b) the Lands Tribunal has made a determination under section 65(3) (variation of terms of offer to sell) and the landlord has failed to issue an amended offer to sell within 2 months thereafter; or
 - (c) the Lands Tribunal has made a finding under section 68(4) (refusal of right to purchase) or has made an order under subsection (2)(b) of this section and the landlord has not duly progressed the application to purchase in accordance with that finding or, as the case may be, order, within 2 months thereafter; or
 - (d) a landlord has served an offer to sell whose contents do not conform with the requirements of paragraphs (a) to (e) of section 63(2) (or where such contents were not obtained in accordance with the provisions specified in those paragraphs),
- the tenant (together with any joint purchaser) may refer the matter to the Lands Tribunal by serving on the clerk to that body a copy of any notice served and of any finding or determination made under this Part, together with a statement of his grievance.
- (2) Where a matter has been referred to the Lands Tribunal under subsection (1), the Tribunal shall consider whether in its opinion—
- (a) any of paragraphs (a) to (c) of that subsection apply, and if it so finds it may—
 - (i) give any consent, exercise any discretion, or do anything which the landlord may give, exercise or do under or for the purposes of sections 61 to 84; and
 - (ii) issue such notices and undertake such other steps as may be required to complete the procedure provided for in sections 63 and 65 to 67; and any consent given, any discretion exercised, or anything done, under the foregoing provisions of this subsection shall have effect as if it had been duly given, exercised or done by the landlord; or

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

- (b) paragraph (d) of that subsection applies, and if it so finds it may order the landlord to serve on the tenant an offer to sell, in proper form, under section 63(2) within such time (not exceeding 2 months) as it may specify.
- (3) Nothing in this section shall affect the operation of the provisions of any other enactment relating to the enforcement of a statutory duty whether under that enactment or otherwise.

Recover ability of discount

72 Recovery of discount on early re-sale

- (1) A person who has purchased a house in exercise of a right to purchase under section 61, or any of his successors in title, who sells or otherwise disposes of the house (except as provided for in section 73) before the expiry of 3 years from the date of service of a notice of acceptance by the tenant under section 66, shall be liable to repay to the landlord, in accordance with subsection (3), a proportion of the difference between the market value determined, in respect of the house, under section 62(2) and the price at which the house was so purchased.
- (2) Subsection (1) applies to the disposal of part of a house except in a case where—
 - (a) it is a disposal by one of the parties to the original sale to one of the other parties; of
 - (b) the remainder of the house continues to be the only or principal home of the person disposing of the part.
- (3) The proportion of the difference which shall be paid to the landlord shall be—
 - (a) 100 per cent. where the disposal occurs within the first year after the date of service of notice,
 - (b) 66 per cent. where it occurs in the second such year, and
 - (c) 33 per cent. where it occurs in the third such year.
- (4) Where as regards a house or part of a house there is, within the period mentioned in subsection (1), more than one disposal to which that subsection would (apart from the provisions of this subsection) apply, that subsection shall apply only in relation to the first such disposal of the; house, or part of the house.
- (5) Where a landlord secures the liability to make a repayment under subsection (1) the security shall, notwithstanding section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970, have priority immediately after—
 - (a) any standard security granted in security of a loan either—
 - (i) for the purchase of the house, or
 - (ii) for the improvement of the house,
 and any interest present or future due thereon (including any such interest which has accrued or may accrue) and any expenses or outlays (including interest thereon) which may be, or may have been, reasonably incurred in the exercise of any power conferred on the lender by the deed expressing the said standard security; and
 - (b) if the landlord consents, a standard security over the house granted in security of any other loan, and in relation thereto any such interest, expenses or outlays as aforesaid.

- (6) For the avoidance of doubt, paragraph (a) of subsection (5) applies to a standard security granted in security both for the purpose mentioned in sub-paragraph (i) and for that mentioned in sub-paragraph (ii) as it applies to a standard security so granted for only one of those purposes.
- (7) The liability to make a repayment under subsection (1) shall not be imposed as a real burden in a disposition of any interest in the house.

73 Cases where discount etc. is not recoverable

- (1) There shall be no liability to make a repayment under section 72(1) where the disposal is made—
 - (a) by the executor of the deceased owner acting in that capacity; or
 - (b) as a result of a compulsory purchase order; or
 - (c) in the circumstances specified in subsection (2).
- (2) The circumstances mentioned in subsection (1)(c) are that the disposal—
 - (a) is to a member of the owner's family who has lived with him for a period of 12 months before the disposal; and
 - (b) is for no consideration:

Provided that, if the disponee disposes of the house before the expiry of the 3 year period mentioned in section 72(1), the provisions of that section will apply to him as if this was the first disposal and he was the original purchaser.

Duties of landlords

74 Duties of landlords

It shall be the duty of every landlord of a house to which sections 61 to 84 and section 216 apply to make provision for the progression of applications under those sections in such manner as may be necessary to enable any tenant who wishes to exercise his rights under this Part to do so, and to comply with any regulations which may be made by statutory instrument by the Secretary of State in that regard.

75 Agreements affecting right to purchase

- (1) Subject to sections 61(1), 67(1) and 72(1)—
 - (a) no person exercising or seeking to exercise a right to purchase under section 61(1) shall be obliged, notwithstanding any agreement to the contrary, to make any payment to or lodge any deposit with the landlord which he would not have been obliged to make, or as the case may be lodge, had he not exercised (or sought to exercise) the right to purchase;
 - (b) a landlord mentioned in section 61(2)(a)(i) or (ii) is required neither to enter into, nor to induce (or seek to induce) any person to enter into, such agreement as is mentioned in paragraph (a), or into any agreement which purports to restrict that person's rights under this Part.
- (2) Paragraph (a) of subsection (1) does not apply to the expenses in any court proceedings.

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

76 **Duty of landlords to provide information to secure tenants**

- (1) Whenever a new secure tenancy is to be created, if—
 - (a) the landlord is not the heritable proprietor of the house; or
 - (b) by virtue of section 61(4), the house is not one to which that section applies; or
 - (c) section 62(7) or (8) may (assuming no change in the date for the time being specified in the former subsection and disregarding any order made, or which might be made, by the Secretary of State under section 62(11)(b)) affect any price fixed, as regards the house, under section 62(1),
 the landlord shall so inform the prospective tenant by written notice.
- (2) Where in the course of a secure tenancy the landlord ceases to be the heritable proprietor of the house or the house, by virtue of section 61(4), ceases to be one to which that section applies, the landlord shall forthwith so inform the tenant by written notice.
- (3) Subsections (1) and (2) do not apply if—
 - (a) the landlord is a housing co-operative within the meaning of section 22, and
 - (b) the heritable proprietor is a local authority.

Powers of Secretary of State

77 **Secretary of State may make provision for vesting in landlord to bring into being tenant's right to purchase house**

- (1) Subject to subsection (2), where, but for the fact that a landlord is not the heritable proprietor of land on which houses have been let (or made available for letting) by it, one or more of its tenants would have a right to purchase under section 61, the Secretary of State may by order made by statutory instrument provide that the whole of the heritable proprietor's interest in the land shall vest in the landlord.
- (2) An order under this section shall only be made where—
 - (a) the heritable proprietor is a body mentioned in paragraph (a) of section 61(2); and
 - (b) the Secretary of State is of the opinion, after consultation with the heritable proprietor and with the landlord, that the order is necessary if the right to purchase is to come into being.
- (3) An order under this section shall have the same effect as a declaration under section 278 of the Town and Country Planning (Scotland) Act 1972 (general vesting declarations), except that, in relation to such an order, the enactments mentioned in Schedule 6 shall have effect subject to the modifications specified in that Schedule.
- (4) Compensation under the Land Compensation (Scotland) Act 1963, as applied by subsection (3) and Schedule 6 shall be assessed by reference to values current on the date the order under this section comes into force.
- (5) An order under this section shall have no effect until approved by resolution of each House of Parliament.
- (6) An order under this section which would, apart from the provisions of this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument shall proceed in that House as if it were not such an instrument.

- (7) An order under this section may include such incidental, consequential or supplementary provisions as may appear to the Secretary of State to be necessary or expedient for the purposes of this Act.

78 Secretary of State may give directions to modify conditions of sale

- (1) Where it appears to the Secretary of State that the inclusion of conditions of a particular kind in offers to sell would be unreasonable he may by direction require landlords generally, landlords of a particular description, or particular landlords not to include conditions of that kind (or not to include conditions of that kind unless modified in such manner as may be specified in the direction) in offers to sell served on or after a date so specified.
- (2) Where a condition's inclusion in an offer to sell—
- (a) is in contravention of a direction under subsection (1) or
 - (b) in a case where the tenant has not by the date specified in such a direction served a relative notice of acceptance on the landlord, would have been in such contravention had the offer to sell been served on or after that date,
- the condition shall have no effect as regards the offer to sell.
- (3) A direction under subsection (1) may—
- (a) make different provision in relation to different areas, cases or classes of case and may exclude certain areas, cases or classes of case; and
 - (b) be varied or withdrawn by a subsequent direction so given.
- (4) Section 211 of the Local Government (Scotland) Act 1973 (provision for default of local authority) shall apply as regards a failure to comply with a requirement in a direction under subsection (1) as that section applies as regards such failure as is mentioned in subsection (1) thereof.

79 Secretary of State may give financial and other assistance for tenants involved in proceedings

- (1) Where, in relation to any proceedings, or prospective proceedings, to which this section applies, a tenant or purchaser is an actual or prospective party, the Secretary of State may on written application to him by the tenant or purchaser give financial or other assistance to the applicant, if the Secretary of State thinks fit to do so:

Provided that assistance under this section shall be given only where the Secretary of State considers—

- (a) that the case raises a question of principle and that it is in the public interest to give the applicant such assistance; or
 - (b) that there is some other special consideration.
- (2) This section applies to—
- (a) any proceedings under sections 61 to 84 and section 216; and
 - (b) any proceedings to determine any question arising under or in connection with those sections other than a question as to market value for the purposes of section 62.
- (3) Assistance by the Secretary of State under this section may include—
- (a) giving advice;

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

- (b) procuring or attempting to procure the settlement of the matter in dispute;
 - (c) arranging for the giving of advice or assistance by a solicitor or counsel;
 - (d) arranging for representation by a solicitor or counsel;
 - (e) any other form of assistance which the Secretary of State may consider appropriate.
- (4) In so far as expenses are incurred by the Secretary of State in providing the applicant with assistance under this section, any sums recovered by virtue of an award of expenses, or of an agreement as to expenses, in the applicant's favour with respect to the matter in connection with which the assistance is given shall, subject to any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 and to any provision of that Act for payment of any sum into the Scottish Legal Aid Fund, be paid to the Secretary of State in priority to any other debts.
- (5) Any expenses incurred by the Secretary of State in providing assistance under this section shall be paid out of money provided by Parliament; and any sums received by the Secretary of State under subsection (4) shall be paid into the Consolidated Fund.

80 Secretary of State may make contributions towards the cost of transfers and exchanges

- (1) The Secretary of State may with the consent of the Treasury make grants or loans towards the cost of arrangements for facilitating moves to and from homes by which—
- (a) a secure tenant of one landlord (the "first landlord") becomes, at his own request, the secure tenant of a different landlord (whether or not by means of an exchange whereby a secure tenant of the different landlord becomes the secure tenant of the first landlord); or
 - (b) each of two or more tenants of houses, one at least of which is let under a secure tenancy, becomes the tenant of the other house (or, as the case may be, of one of the other houses).
- (2) The grants or loans may be made subject to such conditions as the Secretary of State may determine, and may be made so as to be repayable (or, as the case may be, repayable earlier) if there is a breach of such a condition.
- (3) In subsection (1) the reference to a "secure tenant" is to a tenant under a secure tenancy within the meaning of this Act or of the Housing Act 1985 or of Chapter II of Part II of the Housing (Northern Ireland) Order 1983.

81 Information from landlords in relation to Secretary of State's powers

- (1) Without prejudice to section 199 of the Local Government (Scotland) Act 1973 (reports and returns by local authorities etc.), where it appears to the Secretary of State necessary or expedient, in relation to the exercise of his powers under sections 61 to 84 and section 216, he may by notice in writing to a landlord require it—
- (a) at such time and at such place as may be specified in the notice, to produce any document; or
 - (b) within such period as may be so specified or such longer period as the Secretary of State may allow, to furnish a copy of any document or supply any information.
- (2) Any officer of the landlord designated in the notice for that purpose or having custody or control of the document or in a position to give that information shall, without

instructions from the landlord, take all reasonable steps to ensure that the notice is complied with.

General

82 Interpretation of this Part

In this Part and in sections 14, 19, 20 and 216, except where provision is made to the contrary,

"application to purchase" has the meaning assigned to it by section 63;

"family" and any reference to membership thereof shall be construed in accordance with section 83;

"fire authority" means a fire authority for the purposes of the Fire Services Acts 1947 to 1959 or a joint committee constituted by virtue of section 36(4)(b) of the Fire Services Act 1947;

"heritable proprietor", in relation to a house, includes any landlord entitled under section 3 of the Conveyancing (Scotland) Act 1924 (disposition of the dwelling-house etc. by persons uninfert) to grant a disposition of the house;

"housing co-operative" has the meaning assigned to it by section 22;

"landlord" means a person who lets a house to a tenant for human habitation, and includes his successors in title;

"offer to sell" has the meaning assigned to it by section 63(2) and includes such offer to sell as is mentioned in section 71(1)(d);

"police authority" means a police authority in Scotland within the meaning of section 2(1) or 19(9)(b) of the Police (Scotland) Act 1967 or a joint police committee constituted by virtue of subsection (2)(b) of the said section 19 and any police authority constituted in England and Wales or Northern Ireland under corresponding legislation;

"secure tenancy" means a secure tenancy within the meaning of section 44;

"tenancy" means any agreement under which a house is made available for occupation for human habitation, and "leases", "let" and "lets" shall be construed accordingly;

"tenant" means a person who leases a house from a landlord and who derives his right therein directly from the landlord, and in the case of joint tenancies means all the tenants.

83 Members of a person's family

- (1) A person is a member of another's family for the purposes of this Act if—
 - (a) he is the spouse of that person or he and that person live together as husband and wife; or
 - (b) he is that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.
- (2) For the purposes of subsection (1)(b)—
 - (a) a relationship by marriage shall be treated as a relationship by blood;
 - (b) a relationship of the half-blood shall be treated as a relationship of the whole blood;
 - (c) the stepchild of a person shall be treated as his child; and

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

- (d) a child shall be treated as such whether or not his parents are married.

84 Service of notices

- (1) A notice or other document which requires to be served on a person under any provision of this Part or of section 216 may be given to him—
- (a) by delivering it to him;
 - (b) by leaving it at his proper address; or
 - (c) by sending it by recorded delivery post to him at that address.
- (2) For the purposes of this section and of section 7 of the Interpretation Act 1978 (references to service by post) in its application to this section, a person's proper address shall be his last known address.