

GUIDANCE ON THE RIGHT TO BUY – REPORT FROM THE RTB SUB-GROUP

The RTB sub-group has met on 2 occasions. At its first meeting it agreed a structure for the guidance and considered a paper containing guidance on “pressured areas”. The structure that was agreed envisaged guidance along the following lines:

- Part 1 – introduction
- Part 2 – the existing RTB
- Part 3 – the modernised RTB
- Part 4 – the transition to the modernised RTB

At the second meeting, drafts of parts 3 and 4 were tabled for consideration and the attached versions take account of the discussion at that meeting.

The sub-group also agreed that we needed to re-think the original structure since the modernised RTB builds on the existing provisions in the 1987 Act. It, therefore, agreed that parts 2 and 3 should be merged into a single section dealing with the modernised RTB as it will exist when the 2001 Act is implemented.

There are 2 orders required to implement the RTB provisions in the 2001 Act. These are:

- a complex order to ensure the necessary protection of rights;
- an order setting out the information that landlords need to submit with applications to the Scottish Executive for permission to refuse a RTB application because the house in question is to be demolished.

Both of these have been instructed from legal colleagues in the Scottish Executive but neither is currently available.

Housing Division 2
Scottish Executive

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PART 3: THE MODERNISED RIGHT TO BUY

Introduction

1. This part of the guidance sets out the details of the modernised right to buy, placing these modifications within the context of the wider scheme. The following information aims to provide a general outline to the right to buy rules, paying particular attention to the changes introduced by the Housing (Scotland) Act 2001. The main changes introduced by the Act are:

- Sections 42, 43, 44, 45, 46, and 47 of the Housing (Scotland) Act 2001 insert new provisions into section 61 of the Housing (Scotland) Act 1987. These new sections amend the qualifying conditions and the exemptions associated with the right to buy and introduce various new limitations;
- Section 48 inserts a new section 70A into the 1987 Act to allow Scottish Ministers to approve proposals to refuse to sell houses liable to demolition;
- Section 49 amends various aspects of the discounts payable under section 62;
- Section 50 amends section 66 of the Housing (Scotland) Act 1988 to extend the powers of local authorities to offer financial assistance to tenants to buy other accommodation;
- Section 51 repeals various provisions of the 1987 Act and schedule 10 also includes a number of further detailed amendments;
- Finally, section 52 of the Act places a new duty on Scottish Ministers to prepare reports on the extent and effect of the right to buy.

Qualifying conditions

2. Under the modernised right to buy, tenants must have a 5-year continuous period of occupation of a house or a succession of houses with a relevant landlord before they can exercise the right to buy. The list of “relevant landlords” in section 61 of the 1987 Act, has been updated to take account of changes since the 1987 Act. It now includes local authorities (including joint boards and joint committees of 2 or more local authorities, trusts under the

control of the local authority or the common good of a local authority), registered social landlords and water and sewerage authorities.

3. The Act now has an explicit requirement for “continuous occupation”. However, landlords may disregard an interruption in occupation at their discretion where they consider that the interruption resulted from circumstances outwith the control of the person in question, for example, as a result of fire, flood, the need to move to escape domestic abuse etc.

4. The way in which occupation of a house is defined has not been changed and is set out in section 61(10) of the 1987 Act (see above). [To be expanded by including information on the ongoing provisions.]

The price and discount structure

5. As with the unmodernised right to buy, the price at which the tenant can purchase the house is determined by the market value minus any discount to which the applicant is entitled. There are, however, significant changes in the way in which the discount is calculated. There is no distinction in the discount between houses and flats and there is a minimum discount of 20% following the 5 year qualifying period which increases by 1% for every year of occupation of a relevant house to a maximum of 35% of the market value or £15,000 (whichever is the lower). Consequently, unless the discount reaches the cap of £15,000 first, the maximum discount will be reached after 15 years occupation of a relevant house.

6. As with the current right to buy, tenants can count occupation of houses owned by a wide range of landlords. The list of relevant landlords is the same as with the unmodernised right to buy (see section 2, paragraph [] above) except that occupation of a house owned by a registered social landlord (a new term created by the 2001 Act) is also added to the list.

7. The way in which occupation is defined for the purpose of calculating the discount is identical to the way in which occupation is defined for the purposes of calculating the qualifying period.

8. Discount will be restricted where the cost floor rules apply as with the unmodernised right to buy (see above) and the clawback will also continue to apply on the same basis. [Something along the lines of paragraph 15 of Part 2, considering the cost floor rules, should be added in here to give a summary of the rules and point towards the determination.]

9. For the unmodernised right to buy, section 62 of the 1987 Act requires account to be taken of any previous discounts received by the applicant. The 2001 Act modifies this in 2 respects:

- a) Where 2 or more tenants have previously purchased a property receiving discount and either party purchases a subsequent property through the right to buy, then the landlord should make the deduction on the assumption that the previous discount had been received in equal proportions. For example, if £10,000 has been awarded to 2 tenants jointly and one re-applies to purchase a subsequent property then the landlord should only take £5,000 into account in calculating the reduction in the discount.
- b) The definition of an “appropriate person” for calculating any previous discount to be deducted is extended to cover all persons obtaining a discount on a joint basis, including cohabittees of either sex.

10. The 2001 Act also gives Ministers the power to vary the discount regime (including changes to the minimum and maximum percentage discounts, the annual percentage increase and the cap) by order and to establish different discount regimes in different parts of the country. Landlords and tenants will be given early warnings of any plans to make further changes of this nature.

Sales procedures and conditions of sale

11. All tenants who meet the criteria can apply to buy their home. All applications must be made on the appropriate form APP1. The procedure to be followed is as with the unmodernised right to buy. (See chapter 2 sections []).

Exemptions from the right to buy

12. The 2001 Act makes a number of changes to the type of housing which are exempt from the right to buy.

Registered Social Landlords with Charitable Status

13. The new Act amends the 1987 legislation to exempt all registered social landlords from the right to buy providing they are recognised bodies (under section 1(7) (Scottish charities) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990) on the day the 2001 Act received Royal Assent (18 July 2001). A “recognised body” is one which the Commissioners of Inland Revenue have given notice that they qualify for tax relief on account of its charitable purposes. Registered social landlords which obtain recognition under the 1990 Act after 18 July 2001 will not be exempt from the right to buy.

14. The main effect of this change will be to extend the previous exemption to those registered social landlords which obtained charitable status after the previous cut off date of November 1985[Include detail here]. Tenancies of registered social landlords that qualify for this exemption which were not previously eligible for the right to buy and all new tenancies will be, therefore, exempt from the right to buy from [30 September 2002], but there will be protection for those existing tenants who currently have a right to buy entitlement. This is described in [paragraph , section 4 below].

Group housing schemes for persons with special needs

15. The 2001 Act repeals two of the existing exemptions (sheltered housing schemes for the elderly under section 61(4)(c) of the 1987 Act and certain other types of housing for persons with particular needs under section 61(4)(f) of the 1987 Act) and replaces them with a more general exemption for group housing schemes for persons with special needs. To qualify for this exemption, any individual house must be part of a group of houses which have been designed for persons with special needs where either:

- the houses are provided with, or situated near, special facilities for use by their tenants; and/or
- the tenants of the houses are provided with housing support services, ie services which provide support, assistance, advice or counselling to an individual with particular needs which are necessary for them to live independently in their house (See section 69(8) of the 2001 Act for the full statutory definition).

16. The practical effect of this will be to exempt all group housing schemes for persons with particular needs including, but going beyond, the sheltered housing and other schemes that were exempt under the previous provisions.

Individual houses provided for persons of pensionable age

17. Although not strictly speaking an exemption, the 1987 Act included a power for Ministers to refuse to sell certain specific individual houses which had been designed or adapted for use by persons of pensionable age (see section [], paragraph [] above). The 2001 Act modifies this slightly by removing the previous limitation to houses first let on a secure tenancy before 1 January 1990. In future, it will be possible for landlords to seek Scottish Ministers' approval to refuse an application irrespective of when the house was first let or the type of tenancy used at this time.

Fully Mutual Co-operative Housing Associations

18. The 2001 Act specifically exempts tenancies of registered social landlords which are fully mutual co-operative housing associations from the right to buy. This is, in effect, a continuation of the status quo but the exemption is required as a result of bringing fully mutual housing co-operatives within the scope of the Scottish secure tenancy.

Exemptions for Registered Housing Associations not in receipt of grant aid

19. The 2001 Act repeals section 61(4)(b) of the 1987 Act which exempted houses owned by registered housing associations built without grant aid given under specified legislation.

This will ensure that houses acquired by registered social landlords following a stock transfer continue to be potentially eligible for the right to buy following the repeal of the preserved right to buy (See paragraph 79 below).

Limitations on the right to buy

20. In addition to the exemptions described above, the 2001 Act introduces a number of specific limitations on the right to buy. In summary, these are:

- a limitation on the right to buy from registered social landlords (sometimes known as the “10 year exemption”);
- a limitation on the right to buy in designated pressured areas;
- a limitation on the right to buy for tenants with arrears of rent or council tax;
- a limitation on the right to buy for tenants subject to recovery of possession proceedings on “conduct” grounds.

The details of these provisions are set out below.

Registered Social Landlords – 10 year exemption

21. Subject to the various exemptions described above, the effect of the 2001 Act is to extend the right to buy to all tenants with a Scottish secure tenancy where the landlord is a local authority, registered social landlord or water or sewerage authority. Currently, tenants of registered social landlords with assured tenancies do not have a right to buy entitlement unless they have a preserved right to buy following a stock transfer.

22. Section 44 of the 2001 Act inserts a new section 61A into the 1987 Act which has the effect of delaying the extension of the right to buy to certain tenants of registered social landlords for a period of up to 10 years from the date when the new SST and RTB provisions are introduced (ie from 30 September 2002). This delay was introduced to ensure that RSLs

had sufficient time to adjust to the new arrangements. During this 10 year period, tenants affected by this exemption will be able to count time in this tenancy towards the qualifying period and discount entitlement, but they will not be able to exercise their right to buy so long as they remain tenants of the houses in question.

23. The 10 year exemption will apply to all houses let by registered social landlords with the following exceptions:

- Tenancies of houses acquired, for example, by a stock transfer or through purchase from a developer, by the registered social landlord after the date of the introduction of the Scottish secure tenancy (30 September 2002);
- Tenancies of houses built by registered social landlords after the introduction of the Scottish secure tenancy except for those cases where the offer of grant (by either Scottish Ministers or local authorities) was made before the introduction of the new tenancy. (The houses would, in any event, be subject to the cost floor rules – see section [] paragraph [])
- Tenancies of registered social landlords which currently have a right to buy entitlement and which will be protected when the Act is commenced (see section 4, paragraph []).

24. Registered social landlords can, however, elect to set aside this limitation to the right to buy if they so wish. Any such decision would, of course, need to be made in accordance with the rules and procedures for the registered social landlord in question and the 2001 Act also requires:

- The registered social landlord to notify the Scottish Executive of its decision indicating the date from which the exemption will end (notifications should be sent to the Head of Housing Management Branch [?]);

- The registered social landlord to inform the affected tenants and those lenders with an interest in the houses of the decision.

25. RSLs will want to give careful consideration to the implications of “opting in” before making a decision and, in particular, the likely financial implications. This is particularly important since the Act is clear that any such decision is irrevocable. In most cases, they should aim to consult the regulatory section within Communities Scotland as well as seeking the views of tenants and lenders in advance of a decision being made. [Awaiting confirmation of this point from Communities Scotland.]

26. The 2001 Act also allows for registered social landlords to apply to the Scottish Executive for the suspension of the right to buy to be extended for a further period of up to 10 years. The Act does not place a limit on the number of exemptions that may be sought. Before submitting an application the landlord must consult with those lenders with an interest in the affected properties.

27. The expectation is that registered social landlords will use the period of the initial 10 year exemption to assess the implications of the extension of the right to buy for their organisations and plan accordingly. The Scottish Executive will need to be persuaded, therefore, that there are circumstances which justify an extension and it will want detailed information on the anticipated problems and the steps that have been considered and implemented or rejected. Before coming to a decision, the Scottish Executive will also ask Communities Scotland to undertake a detailed appraisal of the likely financial impacts of the introduction of the right to buy for tenants of the houses in question. Further guidance on this will be issued in due course.

Pressured Areas

28. Section 45 of the Housing (Scotland) Act 2001 inserts new sections into the 1987 Act which allow Scottish Ministers to designate any part of a local authority’s area as a “pressured area” following a proposal submitted by the local authority itself. The broad

effect of designation is to suspend the right to buy for certain tenants living in the area for a period of up to 5 years.

29. The policy objective behind these provisions is to establish a mechanism for safeguarding the continued availability of social rented housing where the right to buy could otherwise lead to serious shortages.

The criteria for designation

30. The 2001 Act sets out 2 specific criteria which Scottish Ministers must take into account in considering proposals:

- the need for social rented housing, ie houses provided by the local authority or RSLs, in the area in question is or is likely to be substantially in excess of the social rented housing; and
- this situation is likely to be exacerbated by tenants in the area exercising their right to buy.

31. The shortfall referred to in the first of the 2 criteria may be a current shortfall or one that is expected to arise in the future.

32. It is necessary for both criteria to be met. Scottish Ministers only have authority under the Act to designate areas where they are satisfied that these criteria apply.

The effect of the designation

33. The effect of the designation is to suspend the right to buy for the following tenants living in the area:

- those who have taken out a new tenancy in the area on or after the introduction of the Scottish secure tenancy,

- those with tenancies created before the introduction of the Scottish secure tenancy who did not previously have the right to buy - these will be principally tenants of RSLs with assured tenancies (except for those with a preserved right to buy). Please note that a person has a right to buy entitlement in this context even if he or she has not yet fulfilled the occupancy requirement;
- those who have succeeded, following the introduction of the Scottish secure tenancy, to tenancies initially created beforehand.

34. Tenants in tenancies created before the introduction of the Scottish secure tenancy and which were converted to Scottish secure tenancies will, therefore, not be affected by the suspension providing:

- before the introduction of the Scottish secure tenancy they had the right to buy (whether or not this is with their current landlord);
- they have not succeeded to their tenancy after the introduction of the Scottish secure tenancy.

35. Tenants who have taken out a new tenancy in the area (and will, therefore, be covered by the designation) will include those who occupy their house as a result of a transfer from another house owned by the landlord or as a result of an exchange with a tenant occupying a house owned by another landlord, providing this transfer or exchange has taken place after the introduction of the Scottish secure tenancy.

36. The suspension will be for a period of 5 years or less. Although 5 years is the maximum period allowed for each designation, it is open to local authorities to propose a further designation.

37. The suspension has no effect on notices to purchase under the right to buy which have been served prior to the designation of the area as a pressured area even if this application is still being processed by the landlord.

Selection of areas and consultation

37. Under the provisions of the 2001 Act, it is for local authorities to make proposals for the designation of pressured areas but they may wish to discuss any proposals informally with the Scottish Executive before they are submitted. In drawing up proposals, the Scottish Executive will expect local authorities to take account of their local housing strategies or, if these have not yet been finalised, any preliminary work that has been undertaken. Although the process of approving proposals for the designation of pressured areas is separate and distinct from the submission of local housing strategies to Scottish Ministers under section 89 of the 2001 Act, the Scottish Executive will expect such proposals to be consistent with the local housing strategy or the draft housing strategy if it has not yet been finalised.

38. The 2001 Act allows local authorities to propose the designation of any part of its area providing the specified criteria are met. Although the precise boundaries must be a matter for local determination, the Scottish Executive view is that the aim should be to identify recognised localities or neighbourhoods. In most circumstances, relevant areas are likely to be a contiguous group of houses, but this is not a statutory requirement and there may well be cases where an alternative approach is appropriate.

39. There is a statutory duty on local authorities, before submitting proposals in respect of specific areas, to consult:

- every RSL with houses in the proposed area;
- bodies representing the interests of tenants or other residents living in the area;
- any other persons as the authority think fit.

40. As a matter of good practice, the Scottish Executive will expect local authorities to undertake wide-ranging consultations locally before finalising proposals for pressured areas. These discussions should be about the need for a designation as well as amendments relating to the details of the boundaries and timing. Local authorities will need to bear in mind that RSLs, in particular, may wish to suggest the designation of a particular area.

41. As well as consulting groups of tenants and residents, local authorities should also ensure that all individual tenants affected are informed of the proposal and its likely effect on them and given an opportunity to offer and seek further information.

Submission of proposals to the Scottish Executive

42. Local authorities who wish to put forward proposals for the designation of pressured areas should submit the following information to the Scottish Executive:

- A paper map showing the boundaries of the proposed area, (or digitalised map of same) and a full listing of the Census Output Areas and Unit Postcodes included in the area. The map should be in sufficient detail to be able to clearly identify those houses which will fall within the designated area;
- A statement of the number, type and size of local authority and RSL houses within the proposed designated area and an estimate of the initial number of tenants whose right to buy will be suspended as a result of the designation;
- The period (not exceeding 5 years) proposed for the designation;
- Information of the consultation undertaken identifying the organisations and persons consulted together with a summary of their responses;
- Sufficient information to allow Scottish Ministers to satisfy themselves that the statutory criteria for designation set out in the 2001 Act are met.

43. It will be for local authorities to decide what information should be submitted to demonstrate that the statutory criteria are met. The precise nature of the information required is likely to vary according to the size and nature of the proposed pressured area. It is anticipated that local authorities will want to draw on the assessment and analysis of housing needs which underpins their local housing strategies where these are available and current.

44. Nevertheless, the Scottish Executive will expect the information submitted in support of the designation to address both criteria set out in paragraph 30. Taking account of the conclusions of the earlier Working Group on the Right to Buy which reported in December 2000 and the Rural Partnership for Change National Steering Group which reported in May 2001, the Scottish Executive will be looking in the first instance for information along the following lines:

Evidence of a substantial shortfall in social rented accommodation in relation to need

- The number of social rented houses expected to become available for let to households not currently in the social rented sector in the area through relets and new building over the period of the proposed designation;
- An estimate of the need for social rented housing from households not currently housed in the sector over the period proposed for the suspension;
- Evidence of pressure in the private sector arising from the demand by households for the available private housing stock or a reduction in the supply of private sector housing.

Key indicators are likely to be:

- average waiting times for waiting list applicants for houses in the area relative to the local authority as a whole (along with evidence that the waiting lists are being actively managed);

- recent trends in average house price increases as compared to the local authority area as a whole.

Evidence on the impact of the right to buy on the shortfall of social rented housing in relation to need

- the number of right to buy sales in the area in question (both in absolute numbers and as a percentage of the social rented sector in the area);
- estimates of likely future sales over the period of the designation (with the basis of the estimates clearly explained and reasons given for any assumptions made) identifying those likely to be affected by the designation;
- evidence on the impact or likely impact of right to buy sales and, in particular, whether re-sales have led or are likely to lead, to a shortage of housing for households in housing need.

Two potentially relevant indicators may be:

- local estate agent/solicitor views on the number of right to buy re-sales anticipated and the likely demand for these;
- the number of re-sales as a proportion of total right to buy sales made in the preceding 5 years.

45. Two copies of the relevant information as set out in paragraph [] above should be submitted to:

Action by the Scottish Executive following receipt of proposals for designation of pressured areas

46. Following receipt of proposals for a designation, the Scottish Executive will check to ensure sufficient and appropriate information has been submitted and providing this is the case, it will ask Communities Scotland to carry out an assessment of the proposals.

Communities Scotland will look, in particular, at the way in which the proposals link in to the local housing strategy. It may be necessary to have discussions with the local authority to clarify certain aspects of the proposals.

47. In the light of this assessment which will be made available to the local authority, Scottish Ministers will decide whether to make the designation if the proposals are approved or approved with modifications and will write to the local authority formally designating the area under section 61B of the 1987 Act. (Ministers have the power under the terms of the 2001 Act to make the designation on terms of the proposal or on such terms as they see fit). The designation letter will:

- confirm the boundaries of the pressured area;
- specify the date on which the designation takes place;
- specify the period for which it has affect.

48. If Scottish Ministers decide not to approve the proposals, the Scottish Executive will write to the local authority explaining the reasons for this decision.

49. The Scottish Executive will aim to process and come to a decision on applications within a period of 2 to 3 months from the initial receipt of finalised proposals by local authorities.

Action by local authorities following designation

50. Once an area has been designated, the local authority should take any further steps necessary to publicise the decision and its effect. There is a statutory duty on landlords (both local authorities and RSLs) under section 23(5) of the 2001 Act to notify the tenants directly affected that the designation has been made and the effects of the designation on their right to buy. They may also wish to notify those bodies who were consulted before the proposals were submitted.

51. Once the designation has been made, both local authorities and RSLs as landlords are placed under a statutory duty by section 23(4) of the 2001 Act to notify prospective tenants of houses in the area of the designation and its implications.

51. If the local authority wishes to amend or revoke the designation during the specified period, it should write to the Scottish Executive with the details of the proposed amendment or revocation and the reasons for proposing this.

52. Scottish Ministers will consider these proposals and decide if the designation should be amended or revoked in line with the local authority's proposals. If necessary, they will issue a revised designation for the remaining period of the designation or written confirmation that the designation is to be revoked from a specified date. Local authorities will need to ensure that tenants and other interested parties are fully informed.

53. It is also open to local authorities to propose a further designation for up to a maximum of 5 years for all or part of the area that was originally designated. The local authority should undertake consultation before making such proposals and submit information as at paragraph 43 above.

Arrears of rent and council tax

54. The 2001 Act inserts two new provisions into the 1987 Act entitling landlords to refuse a right to buy application when certain charges are in arrears and requiring RSL tenants to produce a certificate from the local authority demonstrating that they have no council tax or water or sewerage arrears.

55. Where the landlord is the local authority and their records show arrears of rent or other tenancy related charges (linked either to the current tenancy or any other tenancy) or council tax or water and sewerage charges in relation to the house or any other houses in the local government area, it can serve a refusal notice (under section 68 of the 1987 Act). It can repeat this process until such time as it is confident that no such arrears remain. Alternatively, the local authority may disregard any such arrears when an application is received, if it so wishes.

56. Where the landlord is a registered social landlord, it may also refuse an application to purchase if its records show that any rent or tenancy related charges are in arrears. For council tax or water and sewerage charges, if the tenant does not provide a certificate (see following paragraph) demonstrating that there are no arrears or any certificate does indicate such arrears, then the RSL should normally serve a notice of refusal on the tenant. If there are arrears shown, then the landlord should consult with the local authority regarding the circumstances and the approach to be adopted. A decision to proceed with the sale where there are such arrears should only be made where the authority agrees that no notice of refusal should be served. If the tenant provides a certificate without arrears, then the sale should proceed.

57. The Act places a clear duty on local authorities to provide, on request, a certificate to tenants of registered social landlords who wish to exercise the right to buy giving confirmation that there are no arrears of council tax or water and sewerage charges outstanding or details of any arrears. The certificate can be in the form of a letter signed by an appropriate official containing the necessary details. When the local authority receives such a request from an RSL tenant, they should issue a certificate – free of charge – within 21 days. From the date of the certificate, the tenant then has one month to submit it, together with their right to buy application (APP1) form. If the certificate is dated more than one month before the date upon which it is submitted to the RSL, then the RSL can deem it to have expired and request that a more recent certificate be obtained.

58. Landlords can only refuse to sell on the grounds of relevant outstanding arrears at the time of application and not if arrears arise subsequent to this.

Tenants subject to recovery of possession on conduct grounds

59. Any applications to purchase a house through the right to buy should not be accepted if they are received after the landlord has commenced recovery of possession on any “conduct grounds” set out in paragraphs 1 to 7 of schedule 2 of the 2001 Act. While the repossession proceedings are ongoing, the application should remain suspended and only be

reconsidered once the recovery of possession are “finally determined”. According to the 2001 Act, proceedings are only finally determined when either:

- the relevant notice has been withdrawn by the landlord or expired in line with section 14(5) of the 2001 Act; or
- the court has made a decision on the landlord’s request and any appeals have been considered and dealt with.

60. While such proceedings are ongoing, the relevant period of time will continue to count in the calculation of length of residence for the purpose of calculating the qualifying period and discount entitlement.

Houses liable to demolition

61. A new provision in the 2001 Act (section 48, inserting a new section 70A into the 1987 Act) allows for landlords to seek the approval of Scottish Ministers to refuse a RTB application on the grounds that the property is earmarked for demolition. The section sets out the procedures to be followed and the considerations which Ministers should take into account in assessing applications from landlords. It also provides a power for Scottish Ministers to specify by order what information should be supplied by landlords in support on the application.

62. When an application to purchase (APP1 form) is received from an otherwise eligible tenant for a property already earmarked for demolition, the landlord will have one month from receipt of the application to request authority to refuse from Scottish Ministers. The landlord must have made a clear decision to demolish the house in question which has been recorded according to its rules and procedures.

63. As specified in the draft order (copy attached at annex []), landlords must submit the following information in support of an application to refuse:

- Details of the house itself, including its address, its type (detached, semi-detached, terraced, walk up flats, multi-storey flat, four in a block and other), size (in terms of number of apartments), its estimated market value and whether or not the house would be affected by the cost floor rules;
- Details of the applicants length of residence and estimated discount eligibility;
- Details of the landlord's demolition proposals including:
 - a copy of the relevant minute or resolution recording the decision to demolish;
 - an explanation of reasons for the demolition proposal and why it is considered necessary to refuse the applicant;
 - information on the demolition timetable as it will affect the right to buy applicant and any factors which may lead to delay or abandonment of the proposal;
 - details of any consultation which took place with the tenant prior to the decision being taken

[The application should be sent to the Head of Housing Management Branch, Scottish Executive, and there may be a need for follow up discussions or contact to clarify particular points].

64. Scottish Ministers will make their decision in the light of all the circumstances of the case, but they are required by the 2001 Act to pay particular attention to the period that is expected to elapse before the demolition takes effect and the extent to which the tenant has been consulted about the demolition proposal and the implications for his or her right to buy entitlement. Each case will be considered on its merits, but as a general rule Scottish Ministers would expect relatively small demolition proposals to be implemented in 2 years and larger proposals affecting 100 houses or more to be implemented within 5 years.

[– content with the time periods given? Meeting of 1 November generally happy with proposal.] A decision on the application for refusal will then be taken by the Scottish Executive as soon as is practicable after receipt of all the relevant information. The Scottish Executive will aim to make a decision [within 28 working days] of receipt, providing the necessary information is supplied.

65. Where the application to refuse is successful, the landlord should inform the tenant as soon as possible. The 2001 Act requires that, at the very latest, the decision must be conveyed to the tenant within one month of the date when the proposed refusal was agreed by the Scottish Executive. If the application to refuse is unsuccessful, the landlord should attempt to provide the tenant with an offer to sell within one month of the Scottish Executive's decision to refuse or, if this is not possible, within the 2 month period indicated in section 63(2) of the 1987 Act following the service of the initial application.

66. Once a final decision is taken on the basis of the information provided, there is no right to appeal by either the landlord or the tenant. However, the tenant would be free to submit further applications if there is a material change of circumstances, for example, significant delay in, or the abandonment of, the original demolition proposal.

[DN. This needs to be checked with Scottish Executive legal advisers].

Assistance to tenants to obtain other accommodation (cash incentive schemes)

67. Under section 66 of the Housing (Scotland) Act 1988 a local authority, with the approval of Scottish Ministers, may operate a scheme to offer grants to qualifying tenants of their authority to assist them to purchase a house in the private sector. These are often known as “cash incentive schemes”. The main aim of such schemes under the legislation, as originally introduced, was to help alleviate the problems of homelessness by releasing accommodation which can then be made available for letting to people in housing need.

68. Section 50 of the Housing (Scotland) Act 2001 amends section 66 of the Housing (Scotland) Act 1988 in 2 respects:

- To allow local authorities to provide grants to RSL tenants in their area (linked to the more strategic role councils will be taking in the future);
- To provide explicit powers for local authorities to establish a cash incentive scheme for a designated pressured area.

Section 50 of the 2001 Act also extends the scope of cash incentive schemes so that assistance can be given not only towards buying an existing house but also towards the cost of buying land and building a house on that land.

69. These new provisions are intended to give local authorities the necessary powers to establish a cash incentive option, if they so wish, as a means of helping to tackle the shortfall of social rented housing in pressured areas. This guidance is concerned exclusively with the use of cash incentive schemes in pressured areas and reference should be made to circulars [] for more general guidance on cash incentive schemes.

70. Before submitting a scheme, local authorities should consult with registered social landlords operating in the area and other relevant local bodies. The decision to opt for a cash incentive scheme should be taken after carefully considering, through the process of preparing a Local Housing Strategy, various possible ways of tackling housing pressure in the designated area and their relative cost-effectiveness.

71. Sub-section 5A of section 66 of the 1988 Act (as inserted by the 2001 Act) allows Scottish Ministers to issue guidance on the form and content of cash incentive schemes which would be taken into account in considering whether to approve any such scheme. The Scottish Executive does not wish to be too prescriptive on the precise nature of cash incentive schemes drawn up for pressured areas (or elsewhere) but it would recommend that careful consideration be given to the following points:

- setting a flat rate payment (on grounds of simplicity) for each applicant (the Scottish Executive's view is that it should not normally exceed £10,000 unless there are good reasons locally for offering a more generous payment);
- establishing a relatively simple test of resources to ensure that assistance does not go to tenants who can afford to buy without help and, equally, that the applicant has the resources to cope with owner-occupation after purchase;
- setting a maximum limit on the price of the house that might be purchased (or the value of the house and sale if the self-build option is chosen) to avoid assistance being given for the purchase of relatively expensive houses;

72. When the authority wishes to make a scheme in a pressured area it should submit a draft scheme document and supporting statement to Scottish Ministers for approval. Local authorities should include the following information in their documentation seeking approval to operate a scheme:

- the date of commencement and duration of the scheme (this should preferably tie into the designation of the area), total expenditure proposed and maximum number of tenants expected to be assisted;
- the amount to be offered to individual applicants and rules for determining eligibility;
- any proposed limits on type of property which would be eligible, for example, a proposed price limit;
- whether it is intended to make grants for extension or adaptation of existing accommodation or for land acquisition and new building;
- confirmation that the scheme will be available to both local authority and registered social landlord tenants in the area;

- arrangements for publicising the scheme and proposals for monitoring the operation of the scheme.

73. An application should be accompanied by a supporting statement of how the scheme fits within the local housing strategy and how the vacancies released will help the authority meet housing need. The statement will need to consider the extent to which needs could be met in other ways, and indicate what effect the scheme might have on local house prices.

74. The funding of cash incentive schemes in pressured areas will be resourced in different ways according to whether or not the local authority has responsibility for development funding in its area. If it has been allocated a strategic “budget” from resources previously controlled by Communities Scotland then the funding should be found from this budget. If Communities Scotland is still responsible for development funding in its area, then it should make a bid for resources for a cash incentive scheme as part of its normal discussions with the agency about future expenditure priorities.

Lender of last resort

75. Section 21 of the 1987 Act makes provision for local authorities receiving an application to buy to act, in effect, as the lender of last resort in cases where the tenant has been unable to acquire a building society loan. Under this section, the local authority can only refuse a loan application “on the ground that information contained in the loan application is incorrect in a material respect”. Section 51(3) of the 2001 Act ends the obligation placed on landlords to offer such loans and as from September 2002 local authorities will still have the discretion under its general power to provide house loans (section 14 of the 1987 Act) to provide loans for right to buy purchasers, if they so wish. Any loans applied for or agreed by September 2002 should be progressed and existing loans will, of course, continue until the loan is discharged.

Rent to loan scheme

76. The various elements of this scheme, as established in section 62A and 73A to 73D of the 1987 Act are also repealed and the scheme will end from 30 September 2002. However, as with lender of last resort, a saving provision will be introduced to ensure that those already buying through this mechanism will have their position safeguarded.

Preserved Right to Buy

77. Paragraph 17 of Schedule 10 of the 2001 Act repeals section 81A of the 1987 Act which provides that the right to buy should continue to apply where a former secure tenant lost his secure tenancy as a result of a transfer of the ownership of the house to a “private sector landlord”. This was necessary because a move to an assured tenancy linked to a stock transfer would have, otherwise, removed the tenant’s right to buy. With the introduction of Scottish secure tenancy there will be no need for tenants to change their tenancies as a result of a stock transfer. As all Scottish secure tenants have an entitlement to a right to buy (subject to the various exceptions and limitations set out in the 1987 Act, as amended by the 2001 Act), a transfer of houses from one social landlord to another will not in itself change their entitlement. Section 4 gives more detailed guidance on the circumstances in which tenants subject to stock transfers will continue to be able to exercise the right to buy on “old terms and conditions” and the implications for tenants whose houses are acquired by registered social landlords who have an exemption from the right to buy on account of their charitable status.

PART 4: THE TRANSITION TO THE MODERNISED RIGHT TO BUY

Introduction

78. This part of the guidance explains how the modernised right to buy will be introduced after the relevant sections of the 2001 Act have been commenced. In particular, it explains the details of the protection given to tenants with an existing right to buy entitlement when their tenancy is converted to a Scottish secure tenancy as provided for by the [Protection of Rights] order 2002. A copy of the draft order is attached at Annex A.

Timetable for the Introduction of the Modernised Right to Buy

79. The timing of the introduction of the modernised right to buy will be determined by decisions on the timing of the introduction of the Scottish secure tenancy. The current intention is that the Scottish secure tenancy will be introduced in most areas of Scotland from 30 September 2002. The only exceptions to this will be those local authority areas where, subject to the results of a ballot of tenants, the intention is to transfer all of the existing local authority stock to new landlords before 30 September. In these areas, the tenants in question will transfer to the Scottish secure tenancy and the modernised right to buy on or just before the date at which the transfer of houses takes place.

80. Some aspects of the modernised right to buy will apply to **all Scottish secure tenants** following the introduction of the Scottish secure tenancy. These are:

- the replacement of the existing exemption for tenants in sheltered housing schemes by the exemption for group housing schemes designed for persons with special needs (see [] above);
- the ability of landlords to suspend the right to buy where there are arrears of rent or council tax or where the tenant is subject to recovery of possession on conduct grounds (see [] above);

- the new power for Scottish Ministers to refuse to sell houses liable for demolition (see [] above);
- the abolition of the “mortgage to rent” scheme (see [] above);
- the repeal of the obligation on landlords to act as lender of last resort (see [] above);
- the extension of the power of Scottish Ministers to authorise refusal to sell houses provided for persons of pensionable age (see [] above).

The 10 Year Exemption for Registered Social Landlords

81. The 10 year exemption for tenants of certain properties owned by Registered Social Landlords will also commence immediately following the introduction of the Scottish secure tenancy. The scope of this exemption and the way it is intended to work is explained in full above ().

The Designation of Pressured Areas

82. It will be possible for local authorities to submit proposals for pressured areas to Scottish Ministers for their consideration immediately following the implementation of the Scottish secure tenancy. The procedures for submitting proposals for pressured areas and the effect of the designation, ie the tenants whose right to buy will be suspended if the designation is made is explained above ().

Right to buy – terms and conditions

83. The phrase “terms and conditions” is used here to refer to:

- the discount to which the tenant is entitled; and
- the initial qualifying period before tenants become eligible to exercise the right to buy.

84. The effect of the [Protection of Rights] order 2002 will be to ensure that tenants with a right to buy their house before the introduction of the Scottish secure tenancy will continue, after their tenancy is converted to a Scottish secure tenancy, to be able to exercise that right on the “old” terms and conditions rather than the terms and conditions which apply to the “modernised” right to buy. These will be secure tenants of local authorities, registered social landlords and water authorities and some assured tenants of registered social landlords who have a preserved right to buy. These tenants will, therefore, continue to be able to exercise the right to buy after a 2 year qualifying period and be eligible, depending on the length of residence, to a maximum discount of up to 60% in the case of houses and 70% in the case of flats. If the tenant has not completed the initial qualifying period at the point at which the Scottish secure tenancy is introduced, he or she will still be able to exercise the right to buy on “old” terms and conditions rather than those associated with the modernised right to buy.

85. Subject to the exceptions described in paragraphs 9 and 11 below, this protection will be only available for tenants in tenancies which are converted from secure or assured tenancies to Scottish secure tenancies. In general, tenants of new tenancies created after the introduction of the Scottish secure tenancy, including new tenancies created as a result of transfers or exchanges by existing tenants, will only be able to exercise the right to buy on “modernised” terms and conditions, ie they will be subject to a 5 year qualifying period and be eligible for a maximum discount of 35% subject to a cap of £15,000. Tenants who would otherwise continue to be eligible for the right to buy on “old” terms and conditions who are contemplating a transfer or exchange should be advised of the possible implications of this so that they can consider their position.

86. The order does, however, provide for certain exemptions to this general rule to take account of the fact that, in some cases, tenants are required by their landlord to move to a new

tenancy. Tenants will be able to retain the right to buy on “old” terms and conditions following a transfer to a new tenancy in 2 sets of circumstances:

- Where the landlord has sought to recover possession of the tenancy under section 14 of the 2001 Act under the following “management grounds” (as set out in schedule 2) which requires the landlord to provide suitable alternative accommodation:
 - The house is overcrowded within the meaning of section 135 of the 1987 Act (paragraph 9 of schedule 2);
 - It is intended to demolish or carry out substantial work on the house (paragraph 10 of schedule 2);
 - The house has been designed or adapted for persons with special needs and there is no longer any such person in the house and the landlord requires it for another household containing a person with relevant needs (paragraph 11 of schedule 2);
 - The house forms part of a group of houses designed or provided with special facilities or located near special facilities for persons with special needs and, as above, there is no longer a person with such needs in the house and it is required for another person (paragraph 12 of schedule 2);
 - The landlord leases the house and the lease has terminated or is likely to terminate (paragraph 14 of schedule 2);
 - The landlord is an Islands Council, the house is held by the council for educational staff and is required for this purpose (paragraph 15 of schedule 2);

- The landlord wishes to transfer the tenancy to the tenant's spouse, former spouse or co-habitee where the tenant no longer wishes to live in the house (paragraph 15 of schedule 2);

- Where the landlord has made a decision to demolish the house even if formal recovery proceedings have not been instigated.

87. Where a tenant moves out of the house for a temporary period while the house is being renovated and subsequently returns, the tenancy is not terminated and any entitlement to the right to buy on "old" terms and conditions will continue as a matter of course.

88. The order also provides that persons who succeed to existing tenancies under the provisions of section 22 and schedule 3 of the 2001 Act will have a right to buy entitlement based on the "modernised" terms and conditions providing the house in question is not subject to any of the specified exemptions. As a result, with some limited exceptions, persons succeeding to tenancies where the tenant that died had a protected entitlement to the right to buy on the "old" terms and conditions will only be eligible for the right to buy on "modernised" terms and conditions. The exceptions to this where the successor will also inherit the entitlement to the right to buy on "old" terms and conditions are where:

- The successor is a tenant's spouse who occupied the house at the time of the tenant's death as their only or principal home;
- the successor is a cohabitee or same sex partner of the tenant and had been living in the house as their only or principal home for at least 6 months before the tenant's death;
- the successor is a joint tenant.

89. The order also provides that any right to buy entitlement of persons who are assigned a tenancy under the provisions of section 32 and schedule 5 of the 2001 Act is limited to the “modernised” terms and conditions. Again this will apply even if the tenant who assigns the tenancy has a right to buy entitlement based on the “old” terms and conditions

The exemption for Registered Social Landlords with Charitable Status

89. The exemption for Registered Social Landlords who obtained charitable status before the 2001 Act received Royal Assent will apply at the introduction of the Scottish secure tenancy to:

- all tenants who before that date did not have the right to buy either because they had an assured tenancy which did not give an entitlement to the right to buy or they were also exempt from the right to buy on account of the previous exemption for housing associations with charitable status as set out in section 61(4)(e) of the 1987 Act – (See [] above);
- new tenants whose tenancy started after the introduction of the Scottish secure tenancy.

90. The [Protection of Rights] Order 2002 protects the right to buy for tenants of registered social landlords with charitable status obtained before Royal Assent where the tenant had an entitlement to the right to buy before the introduction of the Scottish secure tenancy and the modernised right to buy. This will include:

- tenants of housing associations with a charitable exemption under the 1987 Act who had a preserved right to buy following a stock transfer from Scottish Homes or a local authority to the registered social landlord in question;

- tenants of registered social landlords who will obtain exemption for the first time as a result of the 2001 Act with secure tenancies or tenants with an assured tenancy with a preserved right to buy following a stock transfer of houses from Scottish Homes or a local authority to the registered social landlord in question.

91. Where a tenant of a registered social landlord continues to have an entitlement to the right to buy as a result of this protection, this will be on “old” terms and conditions.

92. The [Protection of Rights] Order 2002 also provides protection for tenants in houses which are transferred, following the introduction of the Scottish secure tenancy, to a registered social landlord which is exempt from the right to buy on account of its charitable status. This protection only applies to tenants who, but for the stock transfer, would have had an entitlement to the right to buy. It does not apply to tenants who are exempt from the right to buy for other reasons, for example, because their house is part of a group housing scheme for persons with special needs, or to tenants subject to the 10 year exemption or a pressured area designation (for as long as these apply). The order effectively continues the protection afforded by the Preserved Right to Buy Regulations which are repealed by the 2001 Act.

93. Protection for tenants in houses owned by registered social landlords with a charitable status exemption applies only for as long as the tenancy is in existence. Tenants of new tenancies, including new tenancies created as a result of existing tenants moving to a different house, will be subject to the exemption and will not, therefore, have a right to buy. The same exceptions to this will apply in the case as described in paragraphs 9, 11 and 12 above:

- tenants who are compulsorily transferred or who are required to transfer to a different house because their house is to be demolished will continue to retain their right to buy entitlement (although the discount they enjoy may change as a result of the cost floor);
- persons succeeding to tenancies will lose any protected entitlement enjoyed by the previous tenant (with the exception of spouses, cohabitees, same sex partners and joint tenants);

- persons who are assigned a tenancy who also lose any protected entitlement.

94. Where tenants continue to enjoy a protected right to buy following a stock transfer to a registered social landlord with a charitable status exemption, their protected entitlement (ie whether or not it is on “old” or “modernised” terms and conditions) will be the same as whatever entitlement they enjoyed before the stock transfer took place.